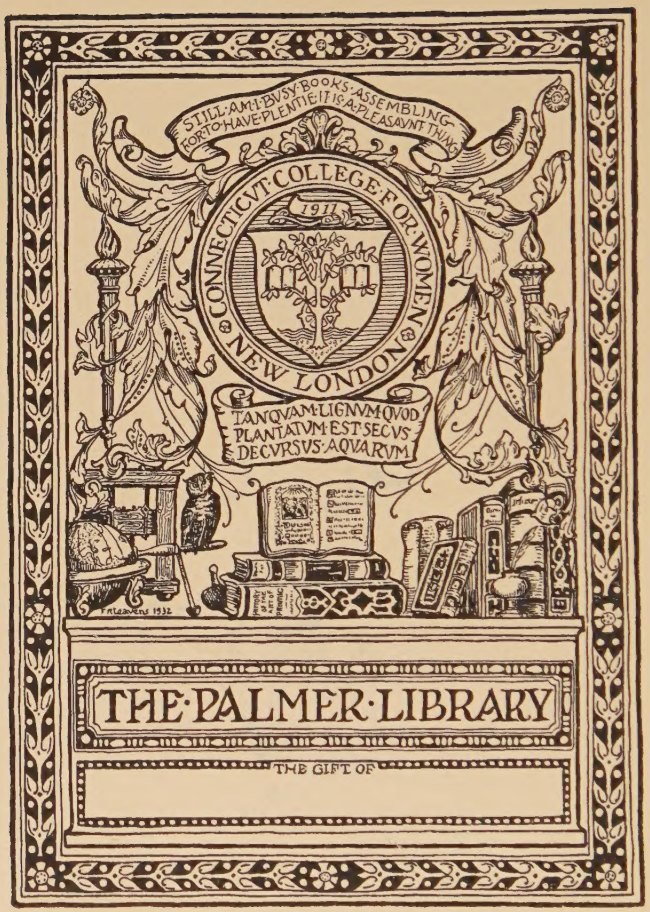
# THE UNITED STATES OF THE WORLD

OSCAR NEWFANG

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HARMONY BETWEEN LABOR AND CAPITAL, 1927

THE UNITED STATES OF THE WORLD

# The United States of the World

## A Comparison between the League of Nations and the United States of America

By

Oscar Newfang

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1930

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OF THE WORLD

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New York

Made in the United States of America

All things whatsoever ye would that men should do to you, do ye even so to them.—*The Golden Rule*

Liberté, Egalité, Fraternité.—*The Motto of France*

## THE PEACE PACT

The high contracting parties solemnly declare in the name of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

*Nations signing or signifying intention to sign*

Australia
Belgium
Canada
Czechoslovakia
France
Germany
Great Britain
India
Irish Free State
Italy
Japan
New Zealand
Poland
Union of South Africa
United States of America



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Albania
Afghanistan
Austria
Bolivia
Bulgaria
Chile
China
Colombia
Costa Rica
Cuba
Denmark
Dominican Republic
Ecuador
Egypt
Esthonia
Ethiopia
Finland
Greece
Guatemala
Haiti
Honduras
Hungary
Iceland
Jugoslavia
Latvia
Liberia
Lithuania
Luxemburg
Mexico
Netherlands
Nicaragua
Norway
Panama
Paraguay
Persia
Peru
Portugal
Roumania
Russia (Union of Socialist Soviet Republics)
Salvador
Siam
Spain
Sweden
Switzerland
Turkey
Uruguay
Venezuela

*Nations not yet signifying intention to sign*

Argentina
Brazil

# INTRODUCTION

The Twentieth Century has undertaken the biggest job of all the centuries. The people of the twentieth century have determined that war shall be abolished. For thousands of years it has been considered proper and legitimate for nations to settle their quarrels with their fists, by physical encounter, by war; just as it had in the early stages of mankind been considered proper and legitimate for individuals to settle their quarrels by fighting them out.

As population increased and civilization advanced, and as weapons grew more dangerous, physical encounters between individuals or groups of individuals became intolerable to the community; and the machinery of lawmaker, judge and policeman was created to suppress physical collisions. No matter what the nature or origin of the quarrel, no matter who is the aggressor, the community through its authorized police officers prohibits and prevents physical violence among individuals or groups of citizens. They are compelled to fight their battles in the courts, and to accept peaceably the application of law to their controversy by the authorized judge.

With the vast improvement in transportation and communication, with the enormous growth of international intercourse, trade and travel, with the

tremendous growth of the investments of all the principal nations in practically all of the countries of the world, the people of the twentieth century have decided that the time has come when physical encounters between nations, no matter what the nature or the origin of the controversy may be, and no matter which nation is the so-called aggressor, have become an intolerable nuisance to the whole community of nations, are henceforth not to be considered under any circumstances as a legitimate method of settling differences, and are to be suppressed by the united action of the whole community of nations.

Toward this end sixty-two nations (all the self-governed nations in the whole world except Brazil and Argentina) have solemnly declared that "the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means".

Through the Covenant of the League of Nations fifty-four of these states, members of the League, have endeavored to create the necessary machinery by which the settlement of controversies between states can be made by pacific means and by which warfare may be avoided.

### Is the Machinery Adequate for the Purpose?

In order to throw the light of history and experience upon this important question the present

comparison between the League of Nations and the United States of America has been made.

In America we have at present forty-eight states, as jealous of their rights and prerogatives, as keenly insistent upon their interests, their prosperity and their prestige as are any of the states of Europe or of any other continent. With one exception peace has been preserved among all of the member states for almost a century and a half. Our states fight their battles before the Supreme Court of the United States, with brains and not with bullets. A comparison of the machinery which has achieved this splendid result with the structure and the functions of the League of Nations should therefore be of vital importance in the struggle to achieve permanent world peace.

Nor has the writer ignored the one sad failure of America. In the single failure of these United States to maintain peace among themselves, as well as in their successes, there may be valuable lessons for the devoted friends of the League which may possibly enable that organization, profiting by the mistakes of the older organization of states, to avoid a similar catastrophe.

New York, January 1st, 1930.

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# The United States of the World

# CHAPTER I

## A COMPARISON OF ORIGINS

We must all hang together, or we'll all hang separately.

BENJAMIN FRANKLIN

The states united by the Covenant of the League of Nations have now completed the first decade of their organization. Their experience has been in many respects similar to that of the states united in America under the Articles of Confederation, during their first decade from 1777 to 1787. A comparison of the early experiences of the two groups of states and a discussion of the development found necessary by the states united in America will throw a flood of light upon the course that the League of Nations may wisely follow along the road toward world peace. It is the part of wisdom to learn the lessons of history and to adopt the methods which have proven their value over a long period of time.

### *Both Organizations Resulted From Outside Pressure*

In making a historical comparison of the League of Nations with the United States of America the

first thing that arrests attention is the similarity of the circumstances surrounding the origins of these organizations of states. Both organizations were born of war. Both originated in alliances formed among groups of states fighting for their liberty. Both were born of stern necessity. Both were brought together by a common danger and were held together by that outside pressure.

The American colonies severed their connection with the mother country in 1776, and after thus becoming "free and independent states" they immediately felt the supreme necessity of a firm "league of friendship" among themselves, in order to maintain that independence. Without some form of alliance or union they were fully aware that in their individual weakness they would be conquered one by one and their independence would be lost. United under a general political organization they were able to co-ordinate their efforts, unite their military strength and maintain their independence.

In a similar manner the states of Western Europe were forced by the outside pressure of a common danger to form a general alliance, in order to maintain their independence. Acting separately they felt that they would have been conquered one by one. Like the American states, they were forced to unite in order to co-ordinate their efforts, to unify their military and naval forces, and thus they maintained their sovereignty and independence.

*A Single Military Head.*

A second similarity in the origins of these two groups of states developed during the course of the war in which the states of each group were engaged for the maintenance of their independence. Each group found that military command, in order to be effective, must be centered in one supreme commander; and the American states therefore chose George Washington as commander-in-chief of the armies of all the states, while the Allies in the World War chose Ferdinand Foch as commander-in-chief of all the armies of the allied and associated states.

At the close of the American Revolutionary War, as at the close of the World War, the independent groups of states found themselves in each case temporarily united under a single supreme military head.

Such absolute authority, however, while necessary for the prosecution of a great war, could not continue to be exercised in time of peace over a group of sovereign and independent states. For it must be noted that, upon the declaration of independence, the American colonies had become each an absolutely sovereign and independent state owing no allegiance to any other state on the American continent or the European continent. "These United Colonies", ran the declaration, "are and of right ought to be free and independent states." "As free and independent states they have full power to levy war, conclude peace, contract al-

liances, establish commerce, and do all other acts and things which independent states may of right do." The American states made good the declaration and maintained their independence, just as the Allied and Associated States maintained their independence; and, in each case, a group of sovereign and independent states found themselves at the close of a desperate war precariously united under a single military head.

*Both Groups Felt the Need of a Permanent Organization.*

With the establishment of peace and the necessity of disbanding the military forces each of these two groups of states felt the need of a permanent organization, or "league of friendship," for their mutual protection, for the maintenance of their friendship and peace among themselves, and for the general welfare of all the states in the group.

In the case of the United States of America this purpose was expressed in the Articles of Confederation in these words: "The said states hereby severally enter into a firm League of Friendship with each other, for their common defence, the security of their liberties, and their mutual general welfare".

In the case of the League of Nations a similar purpose is expressed thus: "The High Contracting Parties, in order to promote international cooperation and achieve international peace" "agree to this Covenant of the League of Nations".

It is therefore clear that the purposes of the general organization of states, both in the United States of America and in the League of Nations were 1) to secure the group of states against attack from the outside, 2) to avoid quarrels, friction and warfare among the states of the group, and 3) to promote the general welfare of the group by handling unitedly such problems as could not be properly solved by the states separately.

*American Union Formed During the War, the League After the War.*

The student of history will note that, while the origins of the general organizations of states in the United States and in the League were similar, the time of forming the organization was slightly different in each case. In America the Articles of Confederation were adopted by the delegates of the states on Nov. 15, 1777, and they were ratified by the last of the states on March 1, 1781. This was about two years before the end of the Revolutionary War. In the case of the League of Nations the Covenant was made a part of the peace treaties, and it became operative on January 16, 1920, more than a year after the close of the World War.

It must also be noted that the colonies possessed only the most rudimentary general organization prior to the Revolutionary War, but their common affiliation with the British Crown gave them a feeling of sympathy, friendship and of common in-

terest that would hardly have existed, had they been colonies of different European nations. Compared with this background, it is well to consider the Entente existing between certain of the Allies as in some measure the precursor and the suggestion of the League.

These variations in time and procedure, however, are not sufficient to cast any doubt upon the contention that there was a substantial similarity in the circumstances and the motives that caused the formation of a general organization among the states of America and among the states of the League.

# CHAPTER II

## A COMPARISON OF THE ORIGINAL FORMS OF ORGANIZATION

Perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

EDMUND RANDOLPH

### *Both Merely Alliances of Governments*

While there are differences in detail, the fundamental nature of the Articles of Confederation of the states united in America and of the Covenant of the states united in the League is identical. Both organizations were formed as alliances or leagues of the governments of sovereign and independent states. The Covenant of the League in its preamble states distinctly that the organization is formed by "the high contracting parties" whose signatures are affixed as the representatives of sovereign states, and the Annex to the Covenant, after naming the original signatory states, mentions certain other "states invited to accede to the Covenant". Article I of the Covenant reads: "Any fully self-governing state, dominion or colony" "may become a member of the League."

The Articles of Confederation, while affirming that the states "hereby severally enter into a firm league of friendship with each other", recite in Article II: "Each state retains its sovereignty, freedom and independence and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." Both organizations were formed of sovereign states and dealt only with states as political units.

*Hence Each State One Vote*

A second similarity between the Articles of Confederation and the Covenant of the League was a necessary consequence according to international law of the organization of these groups merely in the form of a league of friendship between sovereign states. It followed automatically that all the states, whether large or small, whether populous or sparsely settled, whether economically important or not, were equal and that each should have an equal vote.

The League Covenant reads in Article III: "Each member of the League shall have one vote and may have not more than three representatives." The Articles of Confederation read as follows, Article V: "In determining questions in the United States, in Congress assembled, each state shall have one vote." "No state shall be represented in Congress by less than two nor by more than seven members."

*Similarity of the Organs For Action*

A further similarity between the League Covenant and the Articles of Confederation appears in the organs for action in each organization. The Covenant reads, Article II. "The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council." In Article III: "The Assembly shall consist of representatives of the members of the League." Article IV: "The Council shall consist of representatives of the principal allied and associated powers, together with the representatives of four other members of the League. These four members of the League shall be selected by the Assembly."

The Articles of Confederation, Article V, state that "delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress." In Article IX provision is made for "the Committee of the States", similar to the League Council, as follows: "The United States in Congress assembled shall have authority to appoint a Committee, to sit in the recess of Congress, to be denominated a Committee of the states, and to consist of one delegate from each state."

In each organization action is vested, first, in an Assembly or Congress in which each member state has one vote; and, secondly, during the recess of this larger body, in a Council or a Committee of the states which in each case is manifestly intended

to carry out continuously and to be the executive of the policy and will of the whole body of state representatives.

While the position of the larger body in the two organizations is practically the same, there is a slight difference in the formation of the continuing or executive organization. In the League certain of the larger and more important member states are permanently represented on the Council, and the Assembly selects four other member states (which number has since been increased) at its discretion. The Committee of the States consisted of one representative for each of the member states, while the League Council is a smaller body selected from among the general member states.

This difference, while important, is not vital. The reason for it is, that a Committee of thirteen would not be unwieldy, while a Council of fifty-four would be.

### *Action By Unanimity*

There is also a fundamental similarity in the manner of action under the Covenant of the League and the Articles of Confederation. Unanimity is the inevitable requirement for action among sovereign states. Otherwise they cease to be sovereign. If any state can be compelled to do anything against its will and its individual voice and vote, it has by so much parted with its sovereignty.

The provision in the Covenant (Art. 5) is therefore strictly logical: "Except where otherwise ex-

pressly provided in this Covenant, or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting." In what were evidently considered as minor matters, however, the states members of the League waived their sovereignty to a certain extent (Art. 5): "All matters of procedure at meetings of the Assembly or of the Council including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the members of the League represented at the meeting." It will be noted that the requirement of unanimity applies only to the "members of the League represented at the meeting", and does not demand an absolute agreement of all the members of the Assembly or of the Council.

While the parallel provisions under the Articles of Confederation are slightly different, it is necessary to bear in mind in this connection that these articles were adopted in the midst of a desperate war, and that 1) the states could not insist too much upon their sovereignty by providing for unanimity of votes in Congress, for fear of a fatal deadlock upon vital decisions; and 2) the apparent waiving of unanimity was due to the uncertainty as to the period in which all of the states would ratify the Articles. As a matter of fact Maryland, the last of the states to act, did not ratify for almost three years. For these two reasons the Articles of

Confederation provided in Article IX: "The United States in Congress Assembled shall never" decide upon a number of important matters specially enumerated "unless nine states assent to the same; nor shall a question on any other point, except for adjourning from time to time, be determined unless by the votes of a majority of the United States in Congress assembled."

While nine votes out of thirteen is not unanimity, it must be remembered that the requirement is for an absolute number of affirmative votes, while the Covenant requires unanimity only among the representatives "present at the meeting"; and also that it was not certain to the framers of the Articles of Confederation that more than nine states would ratify the Articles during the period of strain and stress in which it was absolutely necessary to act under their authority.

And further, as we shall see when we compare the experiences of the two groups of states under their respective original forms of organization, in order to obtain actual, effective action, and not merely a decision in favor of action which might not be carried out, it was in both organizations necessary to have unanimity of opinion in all of the states.

### *In Both Action Upon Organized States, Not Upon Individuals*

A further similarity of the League Covenant to the Articles of Confederation, and a vitally im-

portant one, lies in the fact that under each organization action is provided only upon organized states as political units, and never upon individuals as citizens. This, of course, is another strictly necessary corollary of the organization in each case as an alliance of governments or a league of states, and not as a union of peoples. The result of this form of organization will become apparent when we come to compare the experiences of the two "leagues of friendship" under this form of organization.

In the present chapter, comparing merely the two forms of organization themselves, we will mention only provisions in each document illustrating this action upon organized states. In Article 8 of the Covenant we read: "The Council . . . shall formulate plans for such reduction (of national armaments) for the consideration and action of the several governments." "After these plans have been adopted by the several governments the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council."

In Article 13: "The members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto"; that is, what action shall be taken with respect to an organized state.

Article 16: "Should any member of the League

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resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all the other members of the League", and the sanction of the blockade is provided against the member state as a political unit.

Quotations might be multiplied, for the whole tenor of the Covenant of the League of Nations clearly indicates that all dealings and all action under the Covenant are between organized states only, and in no case directly upon individual citizens or groups of citizens within the various member states.

While the Articles of Confederation are more prolix, a candid reading of them will convince any intelligent person that it was the intention of the framers, that all action under the Articles should be upon the governments of the individual states, and not directly upon the citizens. Thus in Article IX: "The United States in Congress assembled shall have authority" "to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them".

The provisions of the Articles of Confederation covering disputes between states, as laid down in Article IX (which the reader may consult in detail in the appendix to this volume), like the similar

provisions in the Covenant of the League, cover only disputes between states as political units, and in no case deal with disputes between individual citizens of different states or groups of citizens within different states. The decisions contemplated are against states as political units, precisely as in the League of Nations.

In regard to the financing of the League's permanent secretariat it is provided in Article 6: "The expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union." The levy is upon organized states, who raise their quotas each through the authority of its own government. There is no action possible under the Covenant for direct taxation of the individual citizens of the various states.

Turning to the similar provision under the Articles of Confederation, it is provided in Article VIII "All charges . . . shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state". "The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled." As under the Covenant of the League, no action was possible under the Articles of Confederation for direct taxation of the individual citizens of the various states.

In this connection it is important to note that in each organization the delegates are to be paid or maintained, not by the central organization, but by the states which they represent. While the Covenant of the League does not expressly say this, the fact that it provides only for the expenses of the Permanent Secretariat, and not at all for the expenses of the delegates, leaves the clear inference that the expenses of the latter are to be borne by the states who send them, as in fact they have been since the organization of the League.

The Articles of Confederation distinctly say in Article V: "Each state shall maintain its own delegates in the meeting of the states and while they act as members of the Committee of the States."

*In Both Actual Powers Extremely Limited*

As will be seen by the foregoing remarks, the actual powers conferred upon their general organizations by the states united under the Covenant of the League and by the states united under the Articles of Confederation were in each case extremely limited. It is important to distinguish clearly between "the sphere of action" and the actual powers conferred for taking effective action. It is true that the Covenant authorizes either the Assembly or the Council of the League to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." (Art. 3 and 4.) But when we come to consider the actual powers conferred for dealing with mat-

ters within the sphere of action of the League or affecting the peace of the world we find that the organs of the League, besides being hopelessly handicapped by the requirement of unanimity, can only make recommendations to the member states, or formulate plans for the consideration of the member states, or propose to the member states what steps should be taken by the states themselves. In other words, all actual power to make decisions and to take effective action rests with the states members of the League, and not with the organs of the League.

While the Articles of Confederation would seem to the superficial reader to confer actual powers upon the general organization, the reservations made by the states practically stripped the general organization of any real power to act. Article II reads: "Each state retains . . . every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled". Since among these rights retained were those of raising money and of raising armed forces (except a navy), the powers enumerated as having been conferred upon the general organization were largely illusory and subject to nullification by the non-action of the states. The provision of Article IX empowering the United States in Congress assembled to determine their financial needs and to appropriate the money, to borrow money, to build and equip a navy, to agree upon the number of land forces, were all absolutely

dependent upon the action or non-action of the various states, and in the event of the non-compliance of the states they were without effect. These so-called powers therefore, as in the League of Nations, were little more than the power of recommendation to the states members of the Confederation.

### *Both Dependent Upon Member States For Financing and Defense*

Both the Covenant of the League and the Articles of the Confederation contain the vital defect that the organizations are completely dependent upon their member states for financing their activities. If the member states decline to finance the general organization, it is paralyzed. So in a crisis regarding the defense of the Covenant or of the Articles of Confederation the general organization is completely dependent upon the member states for the necessary forces. If the member states decline to furnish the requisite forces, the general organization is powerless to act. Final authority in each case rests where the power of the purse and the power of the sword rest.

In neither the League nor the Confederation was the power conferred upon the general organization to act directly upon the individual citizens for the raising of money or for the raising of forces. Action in both cases was possible only in the form of recommendations to the organized states as political units, with which recommendations the member states

might comply or neglect to comply, with the result in the latter case of impotence in the general organization.

*A Comparison of the Methods for Adjustment of Differences*

The methods for settling disputes between states adopted under the Covenant of the League of Nations and under the Articles of Confederation of the United States differed somewhat, although there are many points of similarity in certain vitally important respects. Both documents provided 1) for arbitration and 2) for a more or less compulsory settlement.

In the case of the League it is provided in Article 13: "For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them." In the case of the United States the Articles of Confederation provided in Article IX: The states in controversy "shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question."

In both documents the member states agree to abide by the decisions of these courts of arbitration. "The members of the League", Article 13, "agree that they will carry out in full good faith any award that may be rendered." "The judgment and sentence of the court to be appointed in the manner

before prescribed", reads Article IX of the Articles of Confederation, "shall be final and conclusive."

In the event that the states in controversy cannot agree upon any court of arbitration, the procedure is somewhat different in the two organizations. Under the Covenant of the League the members agree (Art. 15) to submit the matter to the Council, which will endeavor to compose the difference through conciliation; but, failing to achieve this result, the Council will publish a report "containing the statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto." Under the Articles of Confederation the two states in controversy will alternately strike one name from a list named by Congress containing three citizens from each state, until the number is reduced to thirteen, from whom seven to nine names shall be drawn by lot, "and the persons so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy."

The latter method, it will be observed, proposes to provide a final determination of the controversy and is perhaps a little more clearcut and binding than the procedure under the League Covenant. As an offset to this, however, it should be borne in mind that, while the Covenant (Art. 16) under certain conditions attempts to apply sanctions to a state judged to be wrong, the Articles of Confederation contain no such provision, Article IX

simply providing that, "if any one of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or case, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress and lodged among the acts of Congress for the security of the parties concerned". The decision is merely placed on record, and no further action is provided.

### *Decisions Always Against Organized States, Never Against Individual Criminals*

A final point of similarity between the Covenant of the League of Nations and the Articles of Confederation that should be well noted is the fact that the controversies arbitrated or decided are exclusively disputes between states and never disputes between individuals, corporations or other groups in the various states. This procedure, again, is a logical but pernicious result of organizing the "league of friendship" as an alliance of governments acting only upon states as political units, instead of directly upon individual citizens. This arrangement makes it necessary to regard every act of an individual national of a state as the act of that state, every crime of an individual citizen as the crime of his state. Every dispute between two traders of different states automatically becomes and must be treated as a dispute between the whole

states. Decisions are made against states, and therefore judgments, sanctions or penalties must be applied to states as political units. The application of force or compulsion to an organized state is a very serious matter, as we shall see when we consider in the next chapter the experiences of the two leagues of friendship under their original forms of organization.

# CHAPTER III

## A COMPARISON OF EXPERIENCES UNDER THE ORIGINAL FORMS OF ORGANIZATION

The more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it when applied to people collectively, and not individually. . . . The use of force against a state would look more like a declaration of war than an infliction of punishment. . . . He hoped that such a system would be framed as might render this resource unnecessary.—JAMES MADISON

### *Financing Through the States Unsatisfactory*

While the states united under the Articles of Confederation adopted a much more elaborate administration for their central organization than did the states united under the League Covenant, the method of financing the program was the same in both organizations. The central organization was given no power to raise money directly, but in each organization was authorized only to make requisitions upon the member states for their quotas of the necessary funds. In the League this apportionment is made in proportion to the payments of the various states to the Universal Postal Union. In the United States it was made in proportion to the total value of all the land in each state. But in both

cases compliance or non-compliance with the requisitions rested entirely within the discretion of each state member.

In the United States this was speedily found to be an impossible method of financing the central authority. Notwithstanding the most pressing needs of Congress, the states debated their quotas, delayed action, and some finally neglected to contribute their quotas. "For the year 1782 Congress asked $8,000,000 and for the year 1783 it asked for $2,000,000; and by the end of the latter year less than $1,500,000 had been paid in." (*The American Nation,* Vol. X, P. 69.)

The League, as has been said, does not propose such an extensive administration for its central bodies as did the United States, but its experience in raising the funds necessary for maintaining the Secretariat during the first decade of its existence has been somewhat similar to that of the United States under the Articles of Confederation. The member states have debated their quotas, have delayed raising them, and in some instances have failed to make the necessary contributions. China is at present over $1,000,000 in arrears in meeting the League's requisitions; Costa Rica is in arrears; and, while it is difficult to get the facts, there are probably other member states in arrears.

As the League grows its functions will naturally expand, and the necessary financing of its activities will increase. It will probably become increasingly

evident that the method of financing through requisitions upon the member states is an impossible method; that it necessarily makes the authority of the central organization subservient to the authority of the member states upon which it is dependent for its necessary supplies; that in this manner it destroys the possibility of control by the League over its members.

Final authority rests where the power of the purse rests. Unless the League is enabled to raise money directly, independently, and without the intervention of the governments of the member states, it will lack the authority and the power to control the relations of the states to one another. A threat by the larger states to cut off the League's supplies and so to starve it to death will always suffice to render any effective control of their actions by the League impossible.

### *State-Paid Delegates Without Loyalty to Central Organization*

A second similarity, and a vitally important one, in the financing of both the United States under the Articles of Confederation and that of the League lies in the fact that the delegates are maintained and paid, not by the central authority, but by the separate member states who send them. The result of this arrangement is that the delegates have no League loyalty, but are simply the attorneys and

agents of the states who send them and who pay them; and their efforts are directed entirely toward getting what they can for their own states, rather than toward serving the general interests of the commonwealth of states. The only real League loyalty at present is in the permanent Secretariat, whose members are paid by the League, and not by the states from which they come. It is human nature to keep your eye sharply on the source of your livelihood and to work in the interest of that source.

The statesmen who controlled the early destinies of the United States, Washington in particular, felt the lack of a direct loyalty to the union, and complained that the members of the Congress, being the paid delegates of the various states, worked entirely too much with an eye to the state that paid them, and entirely too little with an eye to the general welfare of the commonwealth. "Those who pay are the masters of those who are paid", was the observation of Alexander Hamilton in the Constitutional Convention of 1787.

Under this method of financing it was found impossible in the United States to create a loyalty and a devotion to the interests of the whole commonwealth of states; and the Congress resembled more nearly the opposing groups of attorneys in contending for the interests of their clients at court than a united body of public servants striving to reconcile conflicting interests and to promote the general welfare of the whole commonwealth.

### *Unsatisfactory Arrangements Regarding Military Forces*

A comparison of the experiences of the United States and of the League of Nations under their original forms of organization is rather difficult in the sphere of their military experiences, for the reason that the Articles of Confederation were adopted in the midst of a great war and that the United States were engaged in actual war during a large part of the time that these Articles were operative; while the League was formed after the World War and during the first decade of its existence has enjoyed a period of undisturbed peace. It is natural to expect, therefore, that the United States under its first organization would show far greater activity in the attempt to work out a satisfactory general military arrangement than the League has thus far felt necessary.

The methods of raising military forces "for the common defense" in the United States and those "to protect the Covenants of the League" are essentially alike. Congress was authorized (Art. IX) "to agree upon the number of land forces and to make requisitions from each state for its quota in proportion to the number of white inhabitants in such state". The Covenant reads (Art. 16): "It shall be the duty of the Council in such case to recommend to the several governments concerned what effective military, naval or air forces the members of the League shall severally contribute to the

armed forces to be used to protect the Covenants of the League."

It will be observed that in each case the central authority is wholly dependent upon the member states for all military forces. In each case it is authorized only to make a requisition or a recommendation for the forces necessary for the common defense or to protect the Covenants of the League. The member states might comply or neglect to comply with the requisitions or the recommendations made. The forces, if supplied by the member states, were distinctly the forces of the state supplying them, and not the general forces of the central organization. The United States at that period had no "regular army", as the League under the Covenant has no League army.

There was, however, one vital difference in military matters, in which the United States under the Articles of Confederation were further advanced than the states organized under the Covenant of the League. The soldiers when acting for the common defense were paid "out of a common treasury" (Art. VIII); while the evident intention of the Covenant is, that the forces acting "to protect the Covenants of the League" shall be paid by the states supplying such forces. The nearest approach that the Covenant makes to common defense at the common expense is in Article 16: "The members of the League agree further that they will mutually support one another in the financial and economic measures which are taken under this article."

The practical result of this difference in the manner of payment of the armed forces is, that in the one case the loyalty of the soldiers will be directed toward the general organization and in the other case toward the separate states only by which they are paid. There will be no League loyalty among the armed forces, unless these armed forces are paid by the League. And as was said previously, that final authority rests with the power of the purse, so now we may say the same thing in different words: final authority rests with the power of the sword. Considering the tremendous expense of modern warfare, there is no contradiction in these two statements regarding final and supreme authority.

*Impossibility of Disarmament of States*

Under both the Articles of Confederation and the Covenant of the League of Nations no permanent central armed land forces were contemplated. At need the central authority was to request armed forces from the member states. The practical result of this arrangement in both cases was, that it was found impossible to disarm the member states. In the case of the United States this impossibility was obscured by the fact that the Articles were operative in a period of war, while in the case of the League the impossibility has been very conspicuous because of the period of peace throughout the first decade of its existence. Even in the case of the United States, however, the dis-

trust of the member states toward the protecting ability of the central organization may be gathered from the fact that a delegate of Massachusetts to the Constitutional Convention in 1787 stated defiantly, that Massachusetts did not come to the Convention because it felt the need of protection by the general body. Massachusetts was able to protect herself. Of course this was more or less an idle boast. Had it not been for the aid of the other states, and of George Washington, the Virginian, Massachusetts might never have made good her defiance of British authority. But the boast is at least satisfactory evidence of the distrust which the member states felt of the ability of the United States to defend them, under the military arrangement existing by virtue of the Articles of Confederation.

Turning to the experience of the League of Nations on disarmament, Article 8 of the Covenant reads: "The members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations. The Council, taking account of the geographical situation and circumstances of each state, shall formulate plans for such reduction for the consideration and action of the several governments. . . . After these plans shall have been adopted by the several governments, the limits of armaments therein

fixed shall not be exceeded without the concurrence of the Council."

The forces of Germany were reduced by the Peace Treaty of 1919 to this "lowest point consistent with national safety", and it was there stated that this was done in order to permit the Allies to do likewise with their armaments. The representatives of Germany in the League have contended, and the author thinks rightly, that the reduction of Germany's armed forces constituted a tacit obligation on the part of the Allies similarly to reduce their own forces.

Notwithstanding this reinforcement of the obligation of the League Council under Article 8, after a lapse of ten years that body has not been able to formulate a plan for reduction of the armaments of the member states that would have the least chance of acceptance by them, and it has been found absolutely impossible under the military arrangements of the Covenant to disarm the member states. The states simply cannot afford to disarm and to stake their independence and their very existence upon the performance of a promise that the general organization will come to their aid, if attacked. Suppose the promise should not be performed. Where are the forces with which the general organization will protect them, if attacked?

It is idle to expect the member states to disarm before a general armed force sufficient for their protection under all circumstances is actually in

existence and they are satisfied as to its power, its loyalty to the general organization, and its prompt response to their call in case of need.

*An Unarmed Central Organization Cannot Control Armed Member States*

The impotence of an unarmed central body to control heavily armed member states has become fairly evident after a decade of experience under the Covenant of the League, as it became clear to the statesmen of America after a few years' experience under the Articles of Confederation. Georgia went to war with certain Indian tribes without the consent of the United States, in defiance of the explicit provision to that effect in the Articles. Massachusetts dealt with Shay's Rebellion by totally ignoring the Central authority and by raising and using armed forces entirely in accordance with its individual will. States with good harbors, like New York, heavily taxed the imports of neighboring states through these harbors, notwithstanding the fact that the friction thus caused endangered the entire "league of friendship"; and the central authority was powerless to stop the practice.

In the brief experience of the League of Nations during its first decade of existence there have been ten disputes between states about territory: Aaland Islands, Vilna, Upper Silesia, Albania, Poland-Czechoslovakia (the Jaworzina question), Memel, Iraq, Austria-Hungary (regarding Burgenland),

Hungary-Czechoslovakia (the Salzo-Tarjan dispute), Hungary-Czechoslovakia (the Mur district; and two cases of definite occupation of one state's territory by another state, the Corfu occupation of Greek territory by Italy, and the Greek invasion of Bulgarian territory.

Of the ten boundary disputes the League (or bodies working in close affiliation with the League) was able by its moral authority to settle six: Aaland Islands, Upper Silesia, Albania, Iraq, Austria-Hungary, and the first of the disputes between Hungary and Czechoslovakia. In the case of the second boundary dispute between Hungary and Czechoslovakia (the Mur district) the matter was finally decided by interpretation of the Treaty of Peace, and not by a League decision. In the boundary dispute between Poland and Czechoslovakia (the Jaworzina case), the Conference of Ambassadors determined the boundary in question and appointed a boundary commission to lay down the line on the spot. This commission gave Jaworzina to Poland; but when Czechoslovakia refused to acquiesce in this arrangement and claimed that the line as drawn did not agree with the decision of the Conference of Ambassadors, the League authorities did not back up the boundary commission, but reversed it and re-drew the line so as to give Jaworzina to Czechoslovakia. The impotence of the League to insist upon and carry out its original decision seems to an impartial observer a fair inference.

In the boundary dispute between Poland and Lithuania concerning Vilna and the surrounding district, the boundary line was originally drawn to include Vilna within Lithuania. A senior Polish general, on his own responsibility, seized and occupied Vilna. At the League's request Poland repudiated the general's action, but declined to send forces against him for insubordination. The League arranged for a number of voluntary quotas of soldiers from certain of its member states, which forces were intended to occupy the disputed territory while a plebiscite of the inhabitants was taken. As the Polish forces refused to evacuate Vilna, the League forces were never sent. Meanwhile a temporary neutral zone between Polish and Lithuanian forces was drawn, so as to include Vilna in the Polish occupation. This line was finally made definitive. In this case the impotence of an unarmed central authority to control armed member states was fully apparent. In plain language, the League was defied and defeated by one of its own member states. Both the states involved in this boundary dispute were newly created and struggling states. It is therefore all the more apparent that the League would be wholly impotent, if a powerful state, under the guise of a boundary dispute, should seize and occupy with a strong military force territory of a neighboring state.

In the Memel case, that city was at the time occupied and administered by the forces and agents of the League of Nations. Lithuanian irregular

forces approached to take it, the League forces "withdrew in order to avoid bloodshed", Memel was occupied by Lithuanians and was finally allotted to Lithuania. This is probably the most glaring instance showing the impotence of an unarmed central authority to control armed states. The League forces were practically thrown out bodily by the irregular forces of one of the small and recently created Baltic states.

### *Oppression of the Weaker States by the Stronger Could Not Be Controlled*

As a direct result of the military impotence of the central authority, both under the Articles of Confederation and under the Covenant of the League, it has been the experience of each group of states, that oppression of the weaker states by the stronger could not be prevented. Among the American states, as reported by James Madison, one of the ablest contemporary statesmen: "The states having no convenient ports for foreign commerce were subject to be taxed by their neighbors, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms." Imports into Connecticut were heavily taxed by New York. All these methods of levying tribute upon their sister states in the "League of Friendship" were regarded by the victims as a

form of oppression, and produced friction and threats of retaliation, and even of war. Again to quote Madison: "The states are every day giving proof that separate regulations are more likely to set them by the ears than to attain the common object."

Turning to the similar experiences of the states united in the League, it is perhaps sufficient to cite the continuous friction among the states bordering upon the Danube River, in regard to regulations considered oppressive by one or another of these states. The impotence of the League to "make provision to secure and maintain freedom of communications and of transit", as outlined in Article 23 of the Covenant, is the direct cause of the constant scheming and plotting for outlets to the sea, such as that at Salonika for Jugoslavia, that at Tacna-Arica and through the Paraquay River for Bolivia, the troublesome and unstable Danzig corridor, etc.

### *Central Authority Impotent To Prevent Separate Alliances Among Member States*

The experiences of both the states under the Articles of Confederation and the states under the Covenant of the League have afforded clear proof that a mere alliance of governments or "league of friendship" is too weak to prevent separate alliances or cliques from arising among the member states, which endanger and may eventually destroy

the allegiance of the separately allied states to the general organization.

The Articles of Confederation distinctly forbid separate alliances among the member states. Article V reads: "No two or more states shall enter into any treaty, confederation or alliance whatever between them without the consent of the United States in Congress assembled." Notwithstanding this prohibition compacts were made between Virginia and Maryland, and between Pennsylvania and New Jersey. Here were two violations of the clear prohibition of the Articles within the brief period of six or seven years that they were operative.

The Covenant of the League reads, Art. 20: "The members of the League severally agree that this Covenant is accepted as abrogating all obligations inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof." One of the terms thereof (Art. 8) is "the enforcement by *common* action of international obligations". Common action clearly excludes separate action, and the numerous alliances within the League by the Little Entente, by France, Italy, etc., are manifestly contrary to the intent of the Covenant. The inevitable result of these separate alliances is to weaken the allegiance of the member states to the general organization; but the impotence of the League is such that they could not be prevented by the central authority.

Article 21 does indeed except "treaties of arbitration or regional understandings like the Monroe Doctrine" from the separate treaties that may be made by the members of the League. But this can hardly be quoted as a permission for definite defensive alliances among separate groups of states independently of the "common action" of the League for the defense of its members, as contemplated in Article 8.

Both in the states under the Articles of Confederation and the states under the Covenant these separate groupings of states have tended to break down the solidarity of the entire general organization. In the case of the American states one state, Delaware, went so far as to threaten to make an alliance with France, a state entirely outside the general organization.

### *Both Organizations Found Similar Difficulty In the Application of Sanctions*

An inherent and fatal defect in any general organization of states for the purpose of maintaining peace, when the states are united by a mere alliance of governments, instead of a union of peoples, is that all regulations made must necessarily apply to states as political units, and all sanctions provided to enforce these regulations must also be applied to organized states.

The futility of any plan that involves the application of coercion to people in the mass, to a whole state, became very speedily evident to American

statesmen who were trying to administer the Articles of Confederation. When the states refused or neglected to comply with the requisitions for funds most urgently necessary to carry on the work of Congress in the midst of a war, and which requisitions the states themselves had fully authorized in the Articles of Confederation which they all individually accepted and ratified, Alexander Hamilton said: "Then we are brought to this dilemma,—either a federal standing army is to enforce the requisitions or the federal treasury is left without supplies and the government without support". "It has been observed that to coerce the states is one of the maddest projects that was ever devised." "Can we believe that one state will ever suffer itself to be used as an instrument of coercion?" "The thing is a dream. It is impossible."

James Madison was of the opinion that the use of force against a state would be a declaration of war, and not a sanction of law. "The more I reflect upon the use of force", he said, "the less I think its application to organized states is practicable". His view was that the state against which organized force was used would invariably consider such action as a declaration of war against itself which dissolved the whole league.

Upon the way out of this dilemma both the clear-minded statesmen mentioned were in perfect agreement. "What, sir", said Hamilton, "is the cure for this great evil? Nothing but to enable the national laws to operate on individuals in the same

manner as those of the states do. This is the true reasoning upon the subject, sir."

After ten years of the League's existence the League authorities have not yet been able to decide upon a method by which the economic and military sanctions of the Covenant can be applied to an organized state or group of states without practically starting a war. Upon the only occasion in the history of the League thus far in which an attempt was made to use military forces to carry out a decree of the League,—the Vilna dispute—the refusal of the Polish forces to evacuate the city made it clear to the League authorities, that the dispatch of the joint League forces would practically mean war, and the proposed expedition was abandoned.

There has been no attempt to apply the economic blockade, due to the impossibility of agreeing upon the relative parts to be played by the various members of the League, to the reluctance of Germany to obligate herself to the attempt to blockade a powerful neighbor in view of her disarmed condition, and also to the uncertainty as to whether the United States would not insist upon her right to trade with her foreign customers irrespective of the fact that the League had declared a blockade against them. In all frankness it must be admitted that the last consideration has provided the greatest obstacle to the League in its plans for the application of sanctions, as laid down in Article 17 of the Covenant.

The whole idea underlying the application of the economic blockade, however, contemplates only a single state as the offender, whereas the experience of the World War should have taught statesmen that a state in this twentieth century does not defy public justice or international law, unless it has a number of strong allies and believes that the group to which it belongs can overcome any possible opposition. The possibility of application and the effect of the economic blockade become less and less with the increase in the group of states against which it is to be applied. In fact, the offending group of states may be so self-contained and so resourceful that they can turn the tables and inflict more damage in a blockade than they would receive. In any event the application of coercion to a powerful state or group of states is practically a declaration of war, and not a sanction of law for the preservation of peace.

### *Inability of the Central Authority to Control Wild-Cat Currency Issues Among Member States*

A further parallelism between the experiences of the states united under the Articles of Confederation and the states united under the Covenant of the League lies in the inability of each of these central organizations to control or to prevent the issue by its member states of a wildly inflated currency that threatened economic ruin to a number of states, and so threatened the wellbeing of the entire organization.

At first sight it would appear that the Articles of Confederation gave Congress ample authority to regulate and stabilize the currency of the union, since Article IX reads: "The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of the coin struck by their own authority or by that of the respective states." A later paragraph of the same article requires assent of nine states for action to "coin money or regulate the value thereof". The practice of the states, however, makes it clear that these provisions of the Articles applied only to specie, of which there was a great scarcity, due to the war in which the country was engaged. The Articles did not authorize Congress to issue paper currency, but the states not only had this authority but exercised it in such a reckless way that the currency was in the utmost state of depreciation and confusion. One of the states even proposed to issue money with the distinct provision that it would depreciate in value at a regular rate until it became worthless, when a fresh issue would be made. The debtor classes in the various states were continually clamoring for more paper money, so as to make it easier for them to wipe out their debts.

The League of Nations is not authorized by the Covenant either to regulate the value of coins issued by the member states, nor in any way to regulate the fiduciary currencies that they may choose to issue. The chaotic conditions, however,

that resulted after the war from the depreciated currencies in central Europe were so serious and so dangerous to the fundamental purposes of the League to preserve peace and promote the general welfare, that the League was obliged itself to undertake the restoration of financial stability in Austria, in Hungary, and to assist Germany with the Dawes Plan to regain a sound-money footing.

The excessive issues of depreciated currency by the states members of the League are matters of such recent occurrence that further details need not be given, except to say that in Germany the depreciation went so far that the whole national debt could be discharged by a single gold dollar. In each of the two organizations this inability to maintain economic sanity and soundness was the direct result of the form of their organization as loose alliances of governments only, and there is no way to avoid a repetition of the same distressing and dangerous condition until a better form of organization has been adopted.

*The Rule of Unanimity Paralyzes Both Leagues*

As was stated in the previous chapter, while the rule of unanimity was not made a part of the Articles of Confederation, in actual practice the unanimous consent of the states represented in the Congress was requisite in order to take any action of importance whatever. Article IX states that no action of significance or importance shall be taken, "unless nine states assent to the same". There were

thirteen states in the Confederation, and therefore important decisions did not require unanimity, as they do in the League of Nations under its Covenant. But as a matter of actual fact and history, owing to the difficulties of travel in those days, the distractions due to the war, and the indifference of the states to the weak central organization, there were frequently not even nine states represented in the "United States in Congress assembled". "On only three days between October, 1785, and the following April were there nine States on the floor." (*The American Nation*, Vol. X, P. 87.) "The next year, 1786–7, there was not a quorum for months". (Ibid.)

The Assembly of the League of Nations has now completed a full decade of its existence, and the actually ratified results of its ten plenary sessions have contributed practically nothing to the law of nations. Very few conventions have received the unanimous consent of the members of the Assembly, and fewer still have received the unanimous ratification of the states members of the League that is necessary before they shall come into effect. It is not necessary to recount the history of the ten assemblies, in order to show the paralysis which the rule of unanimity has inflicted upon the League's Assembly. This is common knowledge to all who have followed the course of the League since its organization a decade ago.

In the case of the so-called Geneva Protocol, intended to remedy some of the most serious defects

of the Covenant, the Assembly tried, not once, but several times to obtain the necessary unanimity of the states members of the League, but without success. In the case of the important interpretation of Article 10, by which it was hoped to induce the United States to enter the League, the single vote of one of the smaller members of the League (Persia) completely paralyzed the League.

In concluding this comparison of the experiences of the states under the Articles of Confederation and of the states under the Covenant of the League, it might be well to quote once more the remark of James Madison, describing the weakness of the Confederacy, which might in a measure apply to the League of Nations: "It required but little time after taking my seat in the House of Delegates in May, 1784, to discover that, however favorable the disposition of the *state* might be toward the Confederacy, the *legislature* retained the aversion of its predecessors to transfers of power from the state to the government of the nation; notwithstanding the urgent demands of the federal treasury; the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the federal system, and the animosity kindled among the states by their conflicting regulations."

We in America are not offended at criticisms of our first form of organization. Over a century ago our statesmen recognized and admitted the defects of the Articles of Confederation and set about to correct these defects. The criticisms of the League

above made may hurt the friends of the League, but I trust that the pain is not greater than is necessary to direct attention to the disease and to effect the cure.

# CHAPTER IV

## THE SECOND FORM OF ORGANIZATION IN AMERICA

It is clear to me as A B C that the extension of federal powers would make us one of the most happy, wealthy, respected and powerful nations that ever inhabited the terrestrial globe. Without them, we shall soon be everything which is the direct reverse.—GEORGE WASHINGTON

### *The Need of a "More Perfect Union"*

In 1787 the leading statesmen of the United States were convinced that the Articles of Confederation were inadequate, and that if the states were to live in permanent peace, in friendly co-operation and in general prosperity, there must be a revision of the Articles in order to establish "a more perfect union", and in order to make the central organization adequate to the purposes for which it was established. These statesmen succeeded in persuading the United States in Congress assembled to call a convention of the states for this purpose. While some states were lukewarm toward the project and one, Rhode Island, refused to appoint any delegates whatever, most of the states felt keenly the need of a firmer assurance of permanent peace and co-operation among the states

and appreciated the inadequacy of the general authority for the attainment of these ends; and they therefore sent their ablest statesmen to the convention. Especially earnest was the State of Virginia, which called itself the Old Dominion and did not greatly exaggerate in considering itself the mother state. Virginia not only sent two of her ablest statesmen, Madison and Randolph, but also sent the greatest patriot and the wisest statesman of them all, George Washington, who was chosen to preside over the convention.

Pennsylvania, also, sent an able delegation headed by the venerable statesman, Benjamin Franklin. Massachusetts, the third of what were considered the large states, was well represented. The New York delegation, with the exception of Hamilton, were apathetic; while some of the delegations of the smaller states were extremely suspicious and hostile. The delegation of the smallest of the states that were represented, Delaware, were so tied by ironbound instructions that they nearly wrecked the work of the convention.

### *Need of Authority To Regulate Commerce*

Perhaps the chief defect of the union under the Articles of Confederation, as it became evident to the leading statesmen of the convention, was the lack of effective authority in the central organization to regulate the commerce of the states with

foreign countries and that among the states themselves. Some of the states placed restrictions upon the use of their ports by ships of other states, and some gave more favorable terms to foreign countries than to their sister states. These regulations were a constant source of friction between the states, and far-seeing statesmen could readily see that they might in time lead to war among the states.

Each of the states laid whatever charges it pleased upon the imports of neighboring states that were obliged to use its harbors. Here again some of the states laid more onerous terms upon their sister states than they did upon the commerce of foreign nations. Such conduct within the "league of friendship" could not but strain the friendship and cause deepseated friction among the states.

So jealous were the states of one another and so fearful of discrimination against their interests by sister states, that there was danger of leagues or alliances with foreign powers directed against their own neighboring members of the union. The delegation of the small State of Delaware frankly threatened during the convention, that "there are foreign powers who will take us by the hand". A similar suspicion existing at present in the League of Nations is the suspicion that Germany harbors against neighboring states and her intimation of a possible alliance with Russia, as shown by the Treaty of Rappalo.

### *Defiance of the Central Authority By Member States*

A further urgent need of a more adequate central authority appeared to the statesmen of the convention in the frequent action of separate states in defiance of the Articles of Confederation and of the impotent Congress that administered them. The State of Massachusetts raised troops and handled the incident of Shay's Rebellion wholly without the consent and sanction of the Congress, as required by the Articles of Confederation. The State of Georgia conducted a war and made a treaty with the Indian tribes, likewise ignoring the explicit prohibition of the Articles. Here, in the brief space of six years, were two occasions on which the action of an individual state might have involved the other states in war, and in both the central authority was wholly ignored by these states.

Again, the impotence of a central authority that was wholly dependent for its financing upon its member states was glaringly apparent to the statesmen assembled in Philadelphia in 1787. As one of the delegates bluntly put it, "those who pay are the masters of those who are paid". As long as the state legislatures allowed or withheld at their discretion supplies vital for the life of the central organization, it was perfectly plain to these statesmen that the state legislatures were supreme, and that the central organization must be wholly impotent to obtain that control of the relations of

the states to one another which was imperative, if the states were to co-exist in peace, mutual justice toward one another, and in that broad co-operation necessary for the prosperity of all.

### *Jealousy Between Small and Large States*

The lack of adequate authority in Congress to regulate commerce among the states and with foreign nations resulted in a profound jealousy of the larger states on the part of the smaller. The small states were obsessed with a fear of oppression by the large states. The removal of this jealousy and fear was at once the crying need and the most difficult task that the convention was obliged to face. The crux of the whole problem lay here. The same jealousy is apparent in the League of Nations now, and it is in the hope that a discussion of the manner in which the United States successfully met this difficulty over a century ago may shed some light upon the road that the League must travel toward world peace and prosperity that this chapter and the three following ones are inserted.

### *Madison's Summary of the Defects of the First Form of Organization*

James Madison, who has left the most painstaking and accurate minutes of the proceedings of the convention of 1787 in which the second form of organization of the United States was formulated,

enumerated the defects of the Articles of Confederation under eleven heads.[1]

1. The failure of states to comply with the requisitions of the central authority for money and men. The figures showing this failure were quoted in Chapter III.

2. The independent action of the states in matters reserved to the central authority. Madison cites the wars and treaty of Georgia, the maintenance of armies by Massachusetts, and the treaty between Virginia and Maryland regarding commerce in Chesapeake Bay.

3. State laws violating treaty provisions made by the central authority. State laws, such as those restricting vessels of foreign nations to certain ports violated the engagements of the Union as a whole, and in Madison's view were bound sooner or later to involve the United States in difficulties with foreign countries.

4. Oppression of one state by another. Madison cites the law of Virginia restricting foreign vessels to certain ports; the laws of Maryland and New York discriminating in favor of their own ships; the laws of debtor states regarding paper money designed to rob the citizens of creditor states through depreciation of the currency, etc.

5. Lack of general regulations in matters requiring such action. In addition to the vital defect of

[1] For the detailed wording the reader is referred to Madison's Works (Hunt Edition), Vol. II, P. 369.

conflicting and oppressive state regulations of commerce, Madison mentions the confusion of laws regarding naturalization and other minor matters that have no particular bearing upon this comparison of the United States and the League of Nations.

6. Madison considered it a grave defect of the Articles of Confederation that they nowhere granted the protection of the whole Union to each individual state against violent attack upon its governmental institutions. In this connection he cited Shay's Rebellion in Massachusetts. He was strongly of the opinion that the general peace required the guaranty of the Union to each member state against the violent overthrow of its government. He evidently felt that the fire of war, permitted in one room, would be very likely to consume the whole house.

7. The lack of effective sanction for the laws of the central organization. Madison agreed with Hamilton, as quoted previously, that the application of force to an organized political state is war, and that in order to enforce the authority of the central organization and yet maintain peace among the states, it was necessary that the general laws in their proper sphere, like the laws of the individual states in their sphere, should operate directly upon individuals without the intervention of state governments.

8. The lack of ratification of the Articles of Con-

federation by the people. This lack, he conceived, made the organization merely a league of governments, whereas a ratification by the people would make the organization a union of peoples. In the former case he conceived that the authority of the central body could be exercised only upon organized states as political units, in which connection he considered the application of the sanctions necessary to the concept of law to be an act of war against the member state; while in the latter case he conceived that the ratification of the articles of union by the people would give the central authority the right to operate directly upon the citizens of the member states without the intervention of the governments of those states, in which case he felt that the use of force would constitute the regular sanction of law and would be accepted as such, thus maintaining permanent peace among the member states.

As defects number 9, 10 and 11 Madison mentions the endless multiplication of state laws, their frequent changes at the behest of local politicians and their local conflicting interests, and the injustice frequently inflicted by the laws of one state upon the citizens of another state. It was Madison's view that an adequate central authority would tend to harmonize and simplify state laws, and especially that it would prevent the enaction of laws by a member state that would cause injustice to other states and consequent friction between the states.

*The Methods of the Constitutional Convention*

If the friends of world peace have now recognized that the weaknesses of the League of Nations are in many respects very similar to those of the first American Confederation, they will be interested to note how the statesmen of 1787 set about the work of correcting these defects in their political organization and of establishing a more perfect form of organization that has, except for one war, maintained peace and harmony among all of the states for a hundred and forty years.

Their first action was directed toward obtaining a resolution by the existing body of general representatives, requesting all the member states to appoint delegates to meet at Philadelphia for the purpose of considering what revisions or amendments to the Articles of Confederation were necessary to render them adequate to the purposes of the union. The gathering that resulted from this action contained some of the ablest statesmen of the various states, including in addition to Washington, Franklin, Madison and Hamilton, mentioned above, King of Massachusetts, Sherman of Connecticut, the two Morrises of Pennsylvania and the two Pinckneys of South Carolina. While the states were free to select any number of representatives, the delegations were small and select, only two representatives for New Hampshire, Massachusetts, Connecticut and Georgia, three for Maryland, North Carolina and Virginia. The only

states sending five or more delegates were Delaware and Pennsylvania, the former five and the latter eight.

The first difficulty that confronted the convention was the method of voting. In view of the equal sovereignty of the states represented, it was held that each state delegation should have but one vote; and that, when a delegation was divided, this vote could be divided into halves, but no further. Next arose that troublesome problem in all assemblies of the representatives of sovereign states,—the rule of unanimity for action. The delegates at Philadelphia at once realized that, if unanimous acceptance were to be required for each proposal discussed, they would never be able to finish the work to be undertaken. One delegate very ingeniously argued that, inasmuch as the finished result of their labors must receive separate and unanimous ratification by all of the states before it became operative, and that they were acting merely as a committee to make a report, and not as a sovereign body to adopt the proposals reported, unanimity should not be required, but that acceptance by a majority of the delegations should be sufficient to include a proposal in their report. A practicable method of voting was thus reached.

Then came the question of public or private meetings. A number of the delegates were of the opinion that the meetings themselves should be private and only the final result of their deliberations should be made public. They argued that

the delegates would feel far more free to express their opinions and to illustrate their views by citation of actual cases, if they were aware that these criticisms of some of the states would be heard only by the capable statesmen assembled and not by the ordinary citizenry of the states, where they would be likely to cause resentment against the various delegates and hostility to the entire report finally submitted. They argued further that the delegates would feel more ready to change their minds and reverse their views upon hearing convincing arguments against a view held by them, if they were not previously publicly committed to that view in an open meeting. Washington, the President of the convention, with his experience of war councils, was strongly in favor of private deliberations, and this view was finally adopted by the convention.

### *A Rough Draft Previously Prepared Presented As Basis*

The powers of the delegates were strictly limited by the Articles of Confederation themselves, by the resolution of Congress authorizing the convention, and by the separate instructions given by each state to its delegates. The Articles of Confederation read (Art. XIII): "Nor shall any alteration at any time hereafter be made in any of them (i.e. any of the Articles of Confederation), unless such alteration shall be agreed to in a Congress of the United

States and be afterward confirmed by the legislatures of every state."

The resolution of Congress authorizing the convention stated that the convention was to be convened "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the states, render the federal constitution adequate to the exigencies of government and the preservation of the union".

The instructions received by the delegates from their own state legislatures were, with one exception, as broad in scope as the resolution of Congress. Delaware, however, the smallest state represented, was extremely jealous of the larger states and was afraid, as one of its delegates said, that it would "become a cipher in the union". The authority of its delegation was therefore limited to alterations or further provisions which would not change Article V of the Articles of Confederation, which states that "in determining questions in the United States in Congress assembled each state shall have one vote".

Notwithstanding these hampering instructions the convention went earnestly to work to correct the universally admitted weaknesses and defects of the organization under which the states were leagued. They soon found that these defects were so fundamental that a mere change of a clause here, or the addition of a clause or paragraph there, would

merely make matters worse, and that the only remedy was to build a "more perfect union" from the ground up. They therefore took as a basis of their discussions a rough draft constitution prepared by the Virginia delegation and proceeded to discuss its provisions, clause by clause.

The convention justified itself in considering an entirely new constitution, instead of limiting itself as instructed to a revision of the existing Articles, on the ground that the result of their labors would in any event be merely in the nature of a report to Congress, and would not be effective unless adopted by the states. They therefore determined to adopt a thoroughgoing remedy for the evils that existed and to provide for an entirely new form of organization among the states; a form which, after the mature deliberations of many months, and in the light of history and of their experience under the Articles of Confederation, they considered "adequate to the exigencies" of the union.

### *Ratification By the People Instead of By the State Governments*

A second important point in which the convention felt it necessary to depart somewhat from the strict letter of instructions under which it was convened referred to the manner in which the results of their labors should be ratified. As stated above, the Articles themselves provided that alterations in them "should be agreed to in Congress and afterward confirmed by the legislatures of every

state." The convention, however, decided to ask Congress to refer their finished work, not to the legislatures of the states, but to conventions to be elected in each state especially for the purpose of considering and ratifying the constitution of the general organization. The principle reason for this request was "that the powers given to the general government being taken from the state governments, the legislatures would be more disinclined than conventions composed in part at least of other men" (James Madison). The delegates here showed a keen understanding of human nature and fully appreciated the jealousy and aversion of those in authority against establishing an authority higher than their own and thus diminishing their own importance. The method is the same as that almost always found necessary in effecting a business amalgamation or union. In order to accomplish the result, it is necessary to appeal to the stockholders of the various companies. Appeal for ratification to the officers of the companies to be united would almost invariably result in defeat of the project, for the reason that the officers would be greatly disinclined to favor any arrangement, however beneficial to the whole body of stockholders, that diminished their own sovereign independence in the business world and their supreme control of affairs.

In the same manner, if a central world authority is to be established with any real powers to control the relations of the states to one another, however

limited in scope these powers may be, it will be found necessary to seek ratification from the citizens of the various states, instead of from the governments of these states. As Madison went on to say, the governments will "devise modes apparently promoting but really thwarting the ratification". Or, as we say in the twentieth century, they will kill it with reservations.

### *Necessity of Having the General Laws Operate Directly Upon Individuals Without the Intervention of the Governments of Member States*

The ablest of the statesmen gathered in Philadelphia in 1787, especially Washington, Madison and Hamilton, saw clearly that, in order to render the Articles of Confederation "adequate to the exigencies" of the union; that is, in order to achieve a central organization with sufficient authority to regulate the relations of the states to one another, to maintain permanent peace among the states, and to compel the settlement of all differences of whatever nature between states by peaceful and judicial methods, a fundamental change must be made in the method by which the central authority should operate. They were fully convinced that a general organization that was dependent for its financing, and hence for its very existence, upon the compliance of the state governments with its requisitions for funds would never possess sufficient authority to control these member states in their relations to one another. As long as the governments of the

member states were in a position to starve the central authority at any time, the power of the latter was bound to be a mere shadow.

In like manner these statesmen saw clearly that, as long as the decisions of the central authority acted only upon the member states as organized political units and its laws could be enforced against individual offenders only through requests addressed to the state governments, asking the latter to apply such decisions and laws, the authority of the central body could never be rendered adequate to the purposes of preserving peace among the states and of establishing justice in their mutual relations. The states would always be too prone to side with their own offending citizens as against the claims of other states, thus thwarting all the efforts of the central organization to establish justice and to preserve peace.

And any attempt of the central organization to coerce a state was, to quote Madison's expressive phrase, "more like a declaration of war than like a sanction of law". Or as Hamilton put it: "But how can this force be exerted on the states collectively? It is impossible. It amounts to a war between the parties." Hamilton wisely foresaw that the "failure of compliance will never be confined to a single state", and Madison observed in a similar vein: "Could the national resources, if exercised to the utmost, enforce a national decree against Massachusetts, abetted perhaps by several of her neighbors? It was not possible. A small

proportion of the community in a compact situation, acting on the defensive and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States framed on the supposed practicability of using force against the unconstitutional proceedings of the states would prove as visionary and fallacious as the government of Congress."

The experience of the League of Nations statesmen, in their attempts to find a method for applying the coercive provisions of Article 16 of the Covenant, seems to have brought them to the same conclusion regarding the impracticability of applying sanctions of law to an organized state.

The statesmen in 1787, therefore, concluded that the laws of the central organization in their proper sphere, like those of the state organizations in theirs, should operate directly without the intervention of the states upon offending individuals, who could be arrested and tried in court; and upon offending state officials, who could be restrained by legal processes when they exceeded their powers or violated the laws of the general organization.

It was clearly seen that the idea of coercion was necessary to the idea of law; but it was also clearly seen, that it must be a coercion of law and not a coercion of arms. It was felt that a coercion of arms against a sovereign state would involve a war of the states among themselves; while a coercion of law, as applied against the individual offending

citizen, would be a legal process, a sanction of law, an orderly court procedure not involving armed force or warfare.

The decision to make the acts of the general organization operate upon individual citizens, instead of being confined to mere requests and recommendations to the state governments, with which the latter might comply or neglect to comply at their discretion, involved the authorization of those laws by the individual citizens, in the same manner in which state laws were authorized by the individual citizens. The conception of the statesmen present was, that the state organization and the general organization were co-ordinate: that the people conferred certain limited powers necessary for the general regulation of the states upon the general organization, and that they conferred other powers for local government upon the state governments. As John Langdon, one of the delegates from New Hampshire, put it: "As one of the people he could say the national government is mine, the state government is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used."

### *Reconciliation of the Interests of Large and Small States*

At this point the convention was confronted with its greatest difficulty. The feeling of nationality, of devotion to the preservation of their political in-

dependence, was extremely keen in the various states, and especially so in the smaller states; and they greatly feared that any arrangement by which the laws of the general organization should operate upon individual citizens without the intervention or consent of the states would totally destroy the states as independent political units, and swallow them up in one general organization. To this they were strenuously opposed.

The jealousy between the small and the large states was intense. One of the delegates of the large states having expressed the view that it would be *unjust* that a small state should have the same vote as one sixteen times as large, a delegate of one of the small states retorted that it would be *unsafe* for a small state to give another state sixteen times the voting power that it had. On this question of the basis of representation the convention was nearly wrecked. A delegate from Delaware, the smallest state represented, insisted that his instructions did not permit him to enter into any arrangement that would alter the existing equal voting power of each state. The crux of the difficulty was the apparent irreconcilability between the claims of justice and the claims of security.

The reconciliation of these two apparently conflicting claims was finally effected by the establishment of two houses in the general assembly or Congress, in one of which representation was in accordance with the population of the various states and in the other of which each state, whether large

or small, had equal representation and equal voting power. No legislation was valid, unless it received the approval of the majority of the citizens of all the member states in the one house, and also received the assent of a majority of the states as political units in the other house. This compromise satisfied all of the delegates except those from Delaware, who threatened to leave the convention in accordance with the limitation of their explicit instructions. They were finally persuaded to remain and to sign the finished constitution by the argument of their colleagues, that they were merely approving a report which must be ratified by the people of their state before it should become binding on the State of Delaware.

### *A General Organization of Enumerated and Restricted Powers Only*

Notwithstanding this compromise on the part of the large states in sacrificing what they conceived to be part of their just weight in the general councils, and on the part of the small states in sacrificing what they conceived to be part of their security under the previous arrangement of equal voting power with practically unanimous consent necessary for action, the jealousy of all the states, large and small alike, toward any power whatever conferred upon the central and supreme authority was extremely keen, and practically all the delegates were unanimous in the decision that the central authority should have no powers what-

ever except such as were specifically granted to it by the states and specifically enumerated in the Constitution itself. So great was the jealousy of the states of their independence and sovereignty, that a number of the states would not ratify the Constitution, even though it specified just what powers were granted to the central authority, until this point was put beyond any possible doubt by two amendments, one stating that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people", and the other stating that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively and to the people". Rhode Island, one of the smallest states, was so extremely jealous, that it would not ratify the Constitution and come into the Union even after these specific amendments had been adopted by Congress, but insisted upon first seeing them ratified by each of the other states and so becoming valid.

### *Definition of the Sphere of Authority of the Central Organization and that of the States*

There are three methods by which the sphere of authority of the central organization and that of the member states are defined and by which the encroachment of the one authority upon the other is avoided. The first of these methods, as outlined above, is the definite and unequivocal statement that the authority of the central organization ex-

tends only to such powers as are specifically enumerated in the Constitution or are clearly implied by such enumerated powers. A Supreme Court has been established which finally decides whether any legislation of the general organization is beyond the powers granted to it, and also whether any legislation of a state is in conflict with the laws of the central authority properly passed in accordance with its powers.

A second method by which the central authority is thwarted in any attempt to encroach upon the autonomy and the reserved powers of the states is the vote of the states in the Senate. If, in the opinion of a majority of the states, any proposed legislation of the central authority is beyond its powers and is an encroachment upon state sovereignty, the legislation cannot pass the Senate; and so the attempt to exceed the powers granted to the general organization is thwarted.

The third method by which a state may thwart the abuse of power by the general organization, even though concurred in by a majority of the other states in the Senate, is by its refusal to pass concurrent legislation which would obligate all the officials of that state and its police power to enforce the obnoxious federal law. This is, of course, a dangerous procedure, and it practically means the passive resistance by a member state of the authority of the central organization. But the fact that this resource exists and in extreme cases can be exercised renders the central authority more anx-

ious not to exceed its specified authority and also not to pass legislation, whether authorized or not, when such legislation does not have the support of the vast majority, not only of the states, but of the citizens as well.

The system here outlined has, with one exception, kept the peace among the states of America for more than one hundred and forty years. The one exception in which it failed to avoid a war among the states will be considered in a separate chapter, for the purpose of shedding all possible light on the method by which the states united under the League Covenant may avoid a similar catastrophe.

# CHAPTER V

## THE DIFFERENCES BETWEEN THE FIRST AND THE SECOND FORMS OF ORGANIZATION IN AMERICA

The latter (the first form of organization) operated within the limit of its authority through requisitions on the confederated states, resting on the sanction of the state legislatures; the government to take its place was to operate within the extent of its powers directly and coercively on individuals, and to receive the higher sanction of the people of the states.—JAMES MADISON

Having now shown the similarity between the first form of organization in America and the form of organization of the League of Nations, and having outlined the experience in America of the inadequacy of the first form of organization to maintain peace among the states and to promote their general welfare; having considered also the methods by which American statesmen over a century ago corrected the defects in their first form of organization, and in general the basic changes which they found necessary in order to make their political organization "adequate to the exigencies of the union"; we shall in this chapter make a somewhat fuller comparison of the differences between the

Articles of Confederation and the present Constitution of the United States. This comparison will, in many respects, serve also as an outline of the differences between the form of organization of the states united under the League Covenant and the present form of organization of the states united under the Constitution of the United States.

### *Differences Between the Legislative Powers Under the Two Forms of Organization*

The Constitution of the United States consists of three principal articles defining the three functions of government as conceived by the statesmen assembled in the constitutional convention; that is, the legislative, the executive, and the judicial functions; containing in addition one article covering certain general relations between the central organization and the member states; one, regarding the procedure for amendment of the Constitution, another regarding its supremacy, and a final article regarding its ratification.

In the legislative branch the fundamental difference between the first and the second forms of organization in America consisted in an entirely new conception of the legislative agents as the representatives of the people directly, rather than as the representatives of the member states as political units. As a consequence of this new conception the Constitution gives the legislative branch actual power to pass laws acting directly upon the people, whereas the Articles of Confederation gave Con-

gress merely the authority to make recommendations to the member states.

Thus the Constitution (Art. I, Sec. 8) reads: "The Congress shall have power to lay and collect taxes"; while the Articles of Confederation read (Art. VIII): "All charges of war and other expenses . . . shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all the land within each state. . . . The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states."

The Constitution gives the general legislature full authority to regulate commerce among the states (Art. I, Sec. 8): "The Congress shall have power . . . to regulate commerce with foreign nations and among the several states". The Articles of Confederation read (Art. IX): "No treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever." The practical effect of this restriction was to deny the central authority any real power in the regulation of foreign commerce, and the Articles of Confederation did not grant power to Congress to regulate commerce among the states. They did, indeed, contain the provision (Art. IV): "The people of each state shall have free ingress and egress to and

from any other state and shall enjoy therein all the privileges of trade and commerce," but this provision seems to have been interpreted only to mean that, while resident in any state, a citizen could transact business within that state on equal terms with the natives, but not that a citizen residing in another state could claim the right to trade with the citizens of a state on equal terms with the citizens of that state.

The Constitution gave Congress authority "to raise and support armies" and "to provide and maintain a navy"; while the Articles of Confederation, as stated in the previous chapter, merely granted the authority to "agree upon the number of land forces and to make requisitions from each state for its quota".

*Proportionate Representation and Majority Rule*

The grant of power to the central authority to pass laws operating directly upon the individual citizens without the intervention of the state governments necessitated a fairer method of representation than that existing under the Articles of Confederation, when each state, whether large or small, had one vote in Congress and when nine affirmative votes (which during almost all of the period of the sessions of Congress meant practical unanimity of the states present) were required to take any action of importance. The citizens of the large states rightly claimed that, under the Confederate system of one vote per state, a small minority of the popu-

lation might make laws to govern the much larger number of citizens in the populous states; and they therefore insisted upon voting power in proportion to population in the Congress. On the other hand, the feeling of nationality was so intense in the smaller states that they would not agree to a central legislature based strictly on a proportionate representation. As one of their representatives said in the constitutional convention, the small states felt that they were putting their all into the union the same as the large states, and they could not run the risk of a legislature in which the large states had an overwhelming majority of power.

The outcome was a compromise by which the legislature was composed of two houses, one proportionate to population and the other with equal voting power for each state. So keen were the smaller states for equality in the Senate, that a provision was inserted in the Constitution (Art. V) that no amendment of the instrument could be made which would deprive any state without its own consent of its equal suffrage in the Senate.

While the Articles of Confederation, therefore, like the Covenant of the League of Nations, provided for voting by states only, with one vote for each state whether large or small and with the requirement of practical unanimity before any action of importance could be taken, the Constitution provides for proportional representation in one of the chambers of Congress, and for legislation by majority only in each house of Congress.

In this manner the states of the United States have solved the problem of preserving the greatest possible degree of independence of the states that is consistent with the maintenance of justice and peace in their mutual relations, and the opposing problem of securing a sufficient degree of authority in the central organization to make its action in the sphere allotted to it effective throughout the Union.

### *Executive Authority With Proper Sinews: Power of Money and Power of Arms*

The extreme jealousy of their sovereignty and independence on the part of the states united under the Articles of Confederation, like that of the states united under the League Covenant, made them very loth to grant more than a mere shadow of executive power to their general organization. In each case the executive authority was vested in a more or less temporary and changing group, selected from among the general assembly of the states. Under the Confederation Congress had authority to appoint "a Committee of the States", consisting of one delegate from each state, which Committee was given limited power to act during the recesses of Congress. Congress was also authorized "to appoint one of their number to preside, provided that no person be allowed to serve in the office of President more than one year in any term of three years". In the same way the presidency of the League Council is jealously ro-

tated from session to session, lest any real executive authority might be developed.

Long and earnest were the debates in the constitutional convention on the subject of the executive: whether the executive power should be centered in one person or in a number of persons; whether a single executive would not in time grow so powerful that he would become an autocrat and possibly a monarch; what checks were necessary, if a single executive were to be entrusted with power, in order to prevent the abuse of his power and his encroachment on the liberties of the states and of the people.

It was finally decided, however, that in order to render the central authority adequate for the maintenance of general peace and welfare among the states, it was necessary that the executive power should be vested in a single head, assisted and advised by a cabinet of his own choice. Many heads for counsel and legislation, but one decision and one will for prompt action and execution.

Under the second form of organization in the United States the executive power became real and potent, because it was provided with purse and sword, in which rest the supreme authority. Congress under the Constitution is empowered to lay taxes and provide for the financing of the central authority directly, without reference to or intervention of the member states, while the Confederate Congress was obliged to depend for its sinews of life upon the consent and beneficence of the states

whose mutual relations it was established to regulate.

While both forms of organization gave Congress authority to build and maintain a navy, the vital difference between the two was that, under the first form Congress did not have and could not raise the money to construct a navy, while under the Constitution it has the means of raising money and building a navy. The authority without the means was futile; the authority with the means has given the executive under the second form of organization a most potent means of preserving peace and unity among the states.

The binding power of a central navy in preserving peace and unity among states may be clearly seen by the example of the British Empire. While the nations of that commonwealth are widely scattered over the surface of the earth, the common protection of a single navy holds them firmly together and is the most powerful bond of union in the Empire. In the United States the navy is the general police force, protecting all of the states from external aggression and binding the states together into one general federation.

This is one arm of power for the adequate executive provided under the second form of organization in the United States. The other is a general army, recruited by voluntary service irrespective of state citizenship, and maintaining the firm loyalty of the soldiers to the federal authority by reason of their being paid out of the central treasury. This

is the other arm necessary for a central executive adequate to the preservation of justice and peace among the member states.

The League of Nations is at present in a situation comparable with the first form of organization in America, as far as its control of the armed forces of the member states is concerned. This will be clear to the reader, if he will compare the plans for League disarmament in Article 8 of the Covenant with this paragraph of Article VI of the Articles of Confederation: "No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled for the defense of such state, or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defense of such state." The Covenant states the same thing in these words (Art. 8): "The maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety." "The limits of armaments therein fixed shall not be exceeded without the concurrence of the Council."

When, however, under the second form of organization in America a central navy and a central army were provided, under a general executive organization, adequate to protect all of the states from external aggression and to preserve just and peace-

ful relations among the states themselves, it was not necessary to insist upon disarmament of the member states. The latter felt no further need of separate navies and armies, and they voluntarily disarmed, maintaining only a small state militia to suppress riots and to act as internal police.

Not only would a general League naval force be the most powerful means of binding together the states of the League, but it would serve as an international police force to preserve world peace and maintain just relations among nations; and with this tangible and adequate security before their eyes the member states would voluntarily disarm and rid themselves of this heavy burden.

*Effective Powers of General Administration*

In addition to its political functions a modern executive branch has extensive administrative functions. Control and suppression have frequently become hardly more important than co-operation and the general administration of such activities as could not well be carried on by member states individually. Such administrative functions are those of sanitation and public health, control of epidemics, co-operative construction of interstate waterways and harbor works, just regulation of interstate commerce, suppression of immoral interstate traffic in women, suppression of interstate narcotic traffic, etc. Under the first form of organization in the United States, as at present under the League Covenant, all such administrative func-

tions had to be carried on through the intervention of the governments of the member states. There could be no general laws operating directly upon the individual citizen, enabling the central executive and administrative authorities to arrest and punish an offender, irrespective of the member state in which the offense was committed or the state to which he might have fled. Action could be taken only by the governments of the member states, and the sole power of the central authority consisted in recommending what action should be taken. Under such a system an effective, just and uniform central administration of the functions mentioned above was impossible. Not only was the machinery provided impotent and cumbrous, but it was rendered futile by the conflicting state laws or the absence of state laws supporting the central authority.

Again, the lack of an independent method of financing itself by the central assembly under the Articles of Confederation and the payment of the delegates to Congress by the states from which they were sent (as is the present method in the League of Nations) made the Congress an assembly of advocates and agents of their states, concerned chiefly if not wholly with the selfish interests of their particular states, and having very little loyalty or devotion to the general welfare of the United States. However, when the central authority was empowered to finance itself by taxation independently of the governments of the mem-

ber states, and when the representatives in Congress, the executive and judicial officers, the army and the navy were paid out of the common treasury of the United States, an entirely new and powerful bond of loyalty to the central authority was created. The representatives in Congress considered themselves employed by the United States as a whole and began to consider the interests of the whole group of states as paramount to the interests of any single state.

In the same way the officers of the executive and judicial branches, and the rank and file of army and navy developed a loyalty to the United States and its general welfare superior to their concern for the interests of an individual state or section. These results sprang from a fundamental trait of human nature. Men will protect the source of their livelihood. With this independent financial existence and this loyalty of the armed forces to the United States the central authority became powerful enough to establish justice and to maintain permanent peace among the member states.

It is hardly necessary to point out the fact that in the League Assembly, and especially in the Council, the representatives regard themselves and act practically as the attorneys for their respective states and have very little loyalty to the general interests of the whole group of member states. It is doubtful whether this attitude will be greatly changed until the general representatives are paid out of an independent treasury of the League.

"Those who pay are the masters of those who are paid."

*A Supreme Court Instead of Boards of Arbitration*

One of the important differences between the second and the first forms of organization in America was the establishment of a continuous Supreme Court to decide finally controversies between member states according to law and equity, in the place of the previous temporary boards of arbitration, established after a controversy had arisen, meant to conciliate states in controversy and having an eye always to accomplished facts, to expediency and to the relative strength of the parties. There is a vast superiority and a greater effectiveness for the purpose of maintaining peace among states in a permanent court, consisting not of politicians but of able jurists, and established in advance of any controversy to be decided by it, over a board selected in the heat of an existing controversy, selected exclusively by the two specific states engaged in the dispute, and selected only for the single dispute then existing. The court is far more likely to be accepted as impartial by both the contestants than is the board. In the first place, the members of the court will be recognized as men of balanced and judicial minds, detached from the interests involved because of their cloistered manner of life and their life tenure of office; while the members of a board will consist of the partisans and adherents of the contestants, will be politicians

directly or indirectly interested in the subject matter of the controversy, and will not be men of balanced and judicial temperament. And in the second place, with a pre-existing court the controversy will be brought for decision at its inception and will usually be disposed of before the ordinary citizens are fairly aware that a controversy exists; while under a system by which the contestants jointly select a board of "commissioners or judges" after a controversy has become acute and after the passions and pride of the peoples have been enlisted on either side, there will be a far greater likelihood of charges of partiality and a far greater reluctance to submit to a decision of the board.

The Supreme Court, under the second form of organization in the United States, was granted full judicial authority in its proper sphere; while the boards of arbitration, which were its nearest equivalent under the Articles of Confederation, were in fact merely a committee of Congress temporarily appointed and restricted entirely to the decision of a single controversy between two states. The scope of the authority of the Supreme Court is evident from Article III, Section 2, of the Constitution: "The judicial power shall extend to all cases in law and equity arising under this Constitution; to all cases affecting ambassadors and other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to all controversies to which the United States shall be a party; to controversies between two or more states;

between a state and citizens of another state; between citizens of the same state claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, citizens or subjects."

While the Permanent Court of International Justice provided for in Article 14 of the Covenant, and since established, is undoubtedly an improvement upon the selected boards provided for under the Articles of Confederation (which boards were similar to the arbitral Hague courts), it is greatly inferior in authority and scope to the Supreme Court established under the second form of organization in the United States. Its authority, as defined in the Covenant, is limited to controversies between states voluntarily submitted to it by both disputing states. It cannot take cognizance of controversies between individual citizens of different states or between groups of such citizens. It is true that the phrase in the Covenant reads: "any dispute of an international character"; but in actual practice it has been ruled that disputing citizens of different states cannot appeal directly to the Court, but must obtain the espousal of their claims by their states, and the states must appeal to the Court. The form of the League's organization as a confederation of sovereign states, instead of a federation of peoples, logically confines the Court to dealings with states only; but it has the unfortunate effect of aggravating a picayune controversy between two individuals or business interests

situated in different nations to the seriousness of a dispute between two sovereign states, with all the danger of war resulting from such a magnifying process. The Supreme Court in America would deal directly with the case between the two citizens or business interests without the intervention of the member states as political units, in accordance with the Constitution and laws of the United States, thus avoiding the unfortunate result of magnifying a controversy of small importance into a controversy between two sovereign states, merely because the parties in controversy happened to live in different states.

# CHAPTER VI

## THE REMOVAL OF WAR CAUSES BETWEEN THE STATES BY THE SECOND FORM OF ORGANIZATION IN AMERICA

Liberté, égalité, fraternité.

The causes of friction and possible warfare between the states united under the Articles of Confederation, like the causes of friction between the states members of the League at this time, were principally economic in their nature. Some of the larger and more populous states took advantage of their possession of good harbors in order to tax their less powerful neighboring states on all goods imported through these harbors. This practice was naturally regarded by the victims as unfair and oppressive treatment, inconsistent with the profession of a "league of friendship" among the states.

Each state, under the Articles of Confederation (Art. IX), furthermore expressly reserved the right of "prohibiting the exportation or importation of any species of goods or commodities whatsoever". This, it will be observed, is a right claimed and at times exercised by the states members of the League of Nations. The possibilities of econom-

ic friction between states which lay in this power of one state to cut off from another supplies of raw material vital to it, or of closing its markets absolutely to the surplus products of another state, were constantly felt under the first form of organization in America. It was felt that all these hampering restrictions and discriminations between the states produced resentment among the members of the Confederation and might in time lead to wars between them.

Therefore the framers of the second form of organization under the present Constitution of the United States took care to establish full economic freedom among all the states, and in this way they removed all the jealousies and resentments of the members by abolishing all discriminations and hampering restrictions of every description.

*Freedom of Trade Between the States*

By the Constitution of the United States the member states granted to the central organization power "to regulate commerce with foreign nations and among the several states". (Art. I, Sec. 8). In this way the greatest assurance was given to each state that every regulation affecting the commerce of its citizens with other states would be fairly and equitably laid down by the judgment of the whole group of states, and that there would be no discrimination shown in favor of or against the interests of any state. In order to make doubly sure of this interstate justice, the same Article I, Sec-

tion 8, states further that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another." Section 10 provides very explicitly for absolute freedom of trade among all of the states of the Union: "No state shall without the consent of Congress lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress." And finally, lest any state should evade this clear prohibition by taxing the carrier instead of the cargo, the next paragraph states that "no state shall without the consent of Congress lay any duty of tonnage".

In accordance with the clear intent of these provisions there is absolute freedom of trade among all the states united under the Constitution. No duties are laid at state lines. No prohibition of imports or exports exists between or among any of the states, with the exception of the necessary quarantine restrictions against diseased or infected commodities; and all questions in this special field are subject to review and final decision by the authorities of the central organization.

No state may discriminate in any way against the

ships of the various other states, and all the ports are equally free for the use of all the states and their citizens, whether these states have outlets to the sea or not. Congress, in the exercise of the above-mentioned powers to regulate commerce between the states and to establish absolute interstate justice, has created an Interstate Commerce Commission, which has authority to enforce fair and equitable rates on all carriers to the various ports of the Union, and to all points within the Union.

Should any state attempt to establish and enforce any unfair discrimination against the trade of a neighboring state passing into or through its territories, the Interstate Commerce Commission has full authority to receive the complaint of the aggrieved state and to order the injustice removed. If the equity of its decisions is questioned, appeal may be made to the Supreme Court; and, should any state attempt to defy the final decision of the Supreme Court, the latter would be backed up, not by the troops of the aggrieved state, but by the federal troops of the whole Union; so that any resistance by the offending state would be met by the forces of the whole United States, and not merely by the state against which the aggression was practiced.

It will readily be seen that such absolute freedom of trade throughout the member states, without discrimination or hampering restrictions anywhere, permanently removes a large class of causes of friction and war between states. The whole field of

disputes regarding outlets to the sea, disputes which have frequently been the causes of war, is abolished when all states, whether seaboard or inland, have free and equal access to all the harbors of any state whatsoever.

The troublesome problem of "corridors", separating one part of a state from the rest and making it necessary for the two parts to trade through the territory of another state, is non-existent when a central organization exists competent to establish perfect freedom of trade across the corridor and to prohibit any levy of duties or any discrimination whatsoever by the state constituting the corridor. The two parts of the State of Michigan are separated by a "corridor" comprising parts of Indiana and Illinois, but the idea that this situation is dangerous or intolerable has never entered the heads of the inhabitants of lower Michigan or of upper Michigan. A small portion of Rhode Island is cut off from the rest by a "corridor" of Massachusetts; but, although Rhode Island has been the most contentious state in the whole Union, there is no record that it ever felt endangered or aggrieved by this "corridor".

Both banks of the Mississippi River at its outlet are within the boundaries of the State of Louisiana, but there is not the slightest record of any anxiety on the part of the numerous riparian states regarding their access to the sea. Before Louisiana became a part of the federation, however, this was

not the case; and the State of Kentucky had definitely announced that, unless Louisiana should be acquired and made a part of the Union, that state would find it necessary in the pursuit of its vital interests to conquer Louisiana.

### *Freedom of Travel and Domicile Throughout the States*

A second large group of causes of friction and of possible wars between the states of the Union was forever eliminated by the establishment of unrestricted freedom of travel and domicile throughout the states for every law-abiding citizen of any of the states. Article IV, Section 2, of the Constitution states that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." In accordance with this provision of the Constitution and with the laws and customs which have sprung from it there is absolute freedom of migration and domicile throughout the whole extent of the states, without any passport requirements, visas, fees, taxes or restrictions of any kind whatsoever. Any citizen is perfectly free to go into any state where he thinks he may better his condition, and as a result it is impossible that any feeling of discrimination or oppression should arise between the citizens of one state and those of another.

The Constitution has been interpreted to imply a dual citizenship of every inhabitant. He is a

citizen of the United States and also a citizen of the state in which he resides. The former citizenship entitles him to make his home in any state that he may select, and no state may restrict this right.

Not only does this freedom fully satisfy the feeling of natural right and justice in the hearts of freemen, but its effect upon the welfare of the country as a whole has been very beneficial. It has permitted those inhabitants whose heredity and training inclined them toward agriculture to seek homes in the vast and fertile agricultural territories of the Mississippi valley and the Northwest, while at the same time it has permitted those whose bent has been toward trade to seek homes in the cities and ports of the country. Restrictions upon travel and domicile which should have reversed this condition and resulted in confining the German and Swedish elements of the Middle West to New York, Philadelphia, Boston, Baltimore and Pittsburg, while forcing the Hebrews of Eastern Europe to the Western and Northwestern farm lands, would have greatly retarded both the trade and the agriculture of the country. The policy of the states in permitting every man to seek a home where he can make the most of his life and can be of the greatest value to society has not only removed a large class of possible war causes between the states, but it has been the most beneficial policy for the good of the whole country that could have been adopted. It would in the long run also be the best policy for the good of the whole League of Nations.

*Freedom of Investment Throughout the States*

A third large class of causes of friction and possible warfare between the states united under the American Constitution is removed by the provision that a citizen of any state may freely invest, or establish an industry, in any other state on equal terms with the citizens of that state. No state may prohibit or restrict the import or export of money or lawful commodities into or out of its territory by the citizens of another state. This provision enables merchants and manufacturers of any state to have free access to raw materials in any other state, and so removes all the causes of friction regarding needed raw materials which are so numerous among states not federated. No state can feel itself deprived of necessary materials for its needs which may be available only in another state; nor can it have any motive to annex the territory of another state in order to complete its economic resources.

The numerous and bloody wars that have been fought by disunited states for the control of territory containing oil, or iron, or coal need not be here recounted. Among politically independent states it is invariably held that safe and assured access to raw materials can be had only through the conquest and political annexation of the territory containing such materials. Hence the constant friction among states, and the frequent wars resulting from economic policies.

All such friction and possibility of warfare between the states in America is removed by the present form of organization in the United States. The State of New York is extremely dependent upon the coal fields of Pennsylvania; but the thought never enters the New Yorker's head, that it is therefore necessary for New York to annex and politically control those fields. The State of Massachusetts is extremely dependent upon the cotton of the Southern States for its extensive mills; but its citizens never feel that, in order to secure their access to this raw material, it is necessary for Massachusetts to conquer and control the cotton belt.

The general organization guarantees absolute freedom of access by citizens of any state to the raw materials of any other state; and any attempt by a state to discriminate against the citizens of another state, or to restrict or prohibit the export or import of any lawful commodity by its legal owner, would be restrained by the United States Commerce Commission of the national government, backed by the Supreme Court of the United States, which in turn would be upheld, not by the forces of the aggrieved state, but by the federal troops; so that any state attempting to impose unfair treatment upon the citizens of another state would automatically be placed in the position of opposing the entire group of states in the federation.

### *A Single Currency System Throughout the States*

As an important feature of this complete freedom of trade and investment throughout all the states of the Union it may be well here to note the great advantage that results from a single uniform currency throughout all the states, resting upon a single gold reserve. This arrangement wholly eliminates the necessity of the shipment of gold from one state to another, and does away with all worry and anxiety among the states regarding their balances of trade with other states. No citizen of one state ever knows or cares in the least what the "balance of trade" between his state and another may be, whether it is "favorable" or "unfavorable". The variations in these balances of trade among the states do not have the slightest effect upon the currency system, because the gold reserve supports the entire currency of all the states, and is not in any way disturbed by the fluctuating balances owing back and forth among the states.

Among states not federated an entirely different situation exists. Each state has a separate currency resting upon a separate gold reserve, and every unfavorable balance of trade which necessitates a gold shipment reduces the basis of its currency, causes a restriction of currency or of credit in order to maintain a safe ratio of gold, and so keeps business circles in a constant state of tension and anxiety. Bank rates must be manipulated to protect the gold reserve, and general business

throughout each country must suffer as a consequence of the restriction of its credit facilities. Hence the constant scheming of states not federated to increase their exports over their imports and to capture foreign markets, in order to safeguard their gold reserves. The unfair and discriminating methods by which such states frequently seek world markets and try to exclude other nations from these markets are among the fundamental causes of economic friction and wars among them.

### *Law, Order and Peace In Each State Guaranteed By the Whole Federation*

The statesmen who framed the second form of organization in the United States clearly saw that it would be impossible permanently to preserve peace between the states, unless law, order and peace were preserved within each of the states. They were fully aware that armed conflicts within a state are extremely likely to pass over state boundaries and involve neighboring states; and that war, like a wildfire, pays little attention to boundaries. If you do not want the whole house to burn down, you cannot permit a fire in any one of the rooms to rage unchecked.

For this reason the framers of the Constitution wisely inserted in that instrument a guaranty by the whole federation to any member state against domestic violence that was beyond the ability of the state authorities to suppress. They based this

guaranty, however, upon the just premise that the majority of the people in each state had the right to control in that state; and the federal guaranty was to the effect that the duly elected representatives of that majority would be upheld by the power of the whole federation against a violent usurpation of a dissatisfied minority. Article IV, Section 4, of the Constitution reads: "The United States shall guarantee to every state in this union a republican form of government and shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence."

This, it will be observed, is an arrangement by which the majority forces of an individual state, which should justly control that state's government, almost automatically receive as their ally the entire forces of the whole federation. So effective has this arrangement been in preventing violence within the states, that there is no instance (with the possible single exception of Virginia at the opening of the Civil War) in the whole history of all the states over a period of one hundred and forty years, in which a lawfully elected state government was overthrown by the violence of a defeated minority. As far as the individual states are concerned, the plan has maintained peace and upheld law and order in every state at all times. There have been no revolutions overthrowing a state government and endangering interstate

peace. Rebellions and riots against a state government have invariably been suppressed; and whenever the forces of the particular state have been insufficient for this purpose, the federal authorities have contributed whatever forces were necessary to uphold law and order in each state.

This result has been achieved all the more readily, however, because the Constitution provided full guaranties for the fair and equitable treatment of minorities in each state. Any state law that unduly oppresses a minority or is inherently unjust to them can be taken to the Supreme Court, where it will be declared unconstitutional, since the Constitution forbids any state (Art. XIV) "to abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

*Settlement of Controversies Between States*

We come now to a feature of the second organization of the states united in America which is of vital interest to the states united under the Covenant of the League of Nations,—the settlement of controversies between states without resort to war.

Even during the brief period from 1776 to 1787, in which the states were united merely by a "league of friendship", a confederation or alliance of sovereign governments similar to the form of organization of the League of Nations, there were instances

of serious friction which might in time easily have caused wars among the various states. Pennsylvania and Connecticut both claimed a large strip of territory in the northeastern part of what is now the former state, Pennsylvania contending that it held title by its charter and by right of purchase from the Indian tribes, while Connecticut claimed that its own charter gave it the whole strip of land running to the west of the strip which is now the State of Connecticut all the way to the Mississippi River.

For some reason Connecticut did not insist upon its right of ownership across the State of New York, probably because no Connecticut people had settled there; but in Pennsylvania, where they did settle, there was a serious controversy regarding the political sovereignty over these settlements, which at times caused armed clashes and which produced a feeling between the two states which might in time have led to war between them.

Maryland and Virginia had serious controversies regarding the navigation of the Potomac River and Chesapeake Bay, and it was the sincere effort of the statesmen of these two states to settle such controversies that led them to see the need of and to advocate "a more perfect union" among the states as the only means of preventing wars among them over questions of commerce, boundaries, etc.

Delaware seemed almost willing to secure its safety against its more powerful neighboring states

through an alliance with a foreign power, the consummation of which plan might easily have led the states of America into the fallacious balance of power theory that has been the curse of Europe.

### *The Large Number of Controversies Settled By Peaceful Means in* 130 *Years*

Under the second form of organization in America there have been about seventy-five cases between or among states, between the years 1788 and 1918, all of which have been settled by judicial methods without resort to war. So smoothly has the American method of adjusting controversies between states worked during this long period that, with one exception, the alarm of war has never cast its fearful blight over the activities of the people; and most of these controversies were adjusted without the average citizen of the states involved being aware of their existence. The American people have full confidence in the impartiality and effectiveness of the Supreme Court of the United States to settle any controversy whatever that may arise between the states of the Union.

The subjects of these controversies have been extremely varied in their nature. A large number of them related to boundaries. Among these were such knotty questions as the political sovereignty over territory of a riparian state, when the change of channel of the river transferred considerable areas from one side of the river to the opposite

side, the river being the boundary line between two states.

A number of other cases arose from the vague boundary limits mentioned in the colonial charters, which appeared at times to grant the same land to two different states. Others related to the changing main channel of the Mississippi River, which is the boundary of numerous states; the vagaries of this great river transferring islands of considerable area from one side of its main channel to the other, and thus causing boundary disputes between the bordering states.

Still other controversies have arisen between states concerning the proportion of the water of interstate streams which each state could rightly divert for purposes of irrigation. There have also been cases in which a state took over the financial claims of some of its individual citizens against another state, thus converting a private dispute into a dispute between states. In one case the State of Illinois diverted sewage from its natural course into the Mississippi River, thus causing a serious controversy with the State of Missouri. In another case, one state claimed that its commerce was being destroyed under the guise of a quarantine regulation of another state.[1]

It will be seen by this partial enumeration that

[1] Readers who want to make a detailed legal study of the controversies between states in the United States are referred to James Brown Scott's "Judicial Settlement of Controversies Between States of the American Union" (Oxford University Press).

many controversies have arisen among the states united by the Constitution of the United States which would in all probability have led to wars among states not united in a federation. However, under the "more perfect union" established by the second form of organization in America there is provided a Supreme Court of the United States whose judicial power (Art. III, Sec. 2) "shall extend to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects". The decisions of the Court are backed up by the federal forces; so that a citizen, a group of citizens, or the officials of a state, in resisting its decrees, must actively oppose the armed forces, not of the state only which they have wronged, but of the whole group of states in the federation.

While this system for the peaceful regulation of the relations between states is not perfect, it has preserved the peace for over a century among the ever-growing number of states embraced in the United States of America; the only exception to this being an instance in which resistance to the federal authority was not confined to a single state, but to a considerable proportion of all the states. This case will be considered fully in a subsequent chapter.

### *Progress Toward Equal Conditions of Economic Competition Among the States*

There still remains in the United States a field in which the causes of friction and possibly ultimate warfare between states have not been fully removed. Conditions of economic competition between the states are still in a rather chaotic form. One state attempts to set up a humane standard of hours of labor; but another state, by allowing its manufacturers to exploit labor through much longer hours of work, undermines the business of the humane state, destroys the investments of its citizens in manufacturing plants and causes illwill and friction between the two states. Another state attempts to protect its child life and its motherhood from the physical and moral harm of excessive factory toil, and especially of toil through the night hours; while another state permits its manufacturers to coin the blood of little children and to endanger the health of the mothers of the next generation through excessive toil and night labor. The result again is that the state with the least humane standards takes business from the state that aims at a higher standard of humanity, and the consequence is apt to be ill feeling and friction between the states, which might under some circumstances lead to war.

The United States, however, is making progress in eliminating these various economic causes of interstate friction. The establishment and work of

the Interstate Commerce Commission has practically abolished the unfair practice of rate rebating on the railroads of the country, a method formerly employed to discriminate in favor of certain shippers or certain sections at the expense of others. Recently there has been established a Federal Trade Board, which is working with some success to destroy unfair trade practices, and to establish a straightforward and equitable code of business ethics throughout all the states. Regarding a uniform working day Congress has adopted in all federal work the eight-hour day, and the influence of this standard is causing its gradual adoption in some of the states, and it is hoped eventually will in all of them. Constant effort is also being made toward the establishment of humane standards of labor for women and the uniform protection of child life throughout the states. But it must be admitted that in the elimination of this group of war causes the states united under the American Constitution have not progressed much, if any, further than the states united under the League Covenant.

# CHAPTER VII

## THE ECONOMIC BENEFITS OF FREEDOM IN AMERICA

I have often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that (painted sun) behind the president, without being able to tell whether it was rising or setting; but now at length I have the happiness to know, that it is a rising, and not a setting sun.—BENJAMIN FRANKLIN, the aged.

The true test of the value of any political organization is the degree of general welfare which it affords the individual citizens who live under it. That the average citizen of the United States enjoys a larger share of the necessities and the amenities of life than the average citizen of almost any other country that could be named, will be generally admitted. The purpose of this chapter is to show that this beneficent result flows in a large measure from the greater freedom in interstate relations enjoyed by the citizens of the member states of this federation, as compared with the degree of freedom in interstate relations enjoyed by the citizens of the states members of the League of Nations.

### *Free Markets Make Possible Large Scale Production, Low Prices, and Plenty for All*

The enormous mass production in America, resulting in a low unit cost of production, low prices

to the consumer, and the consequent ability of the average citizen to buy and enjoy a far larger share of commodities than in most other countries, is clearly traceable to the absolute freedom of trade throughout all the states of the Union, thus affording manufacture an enormous unrestricted market for its products. Mass production cannot be carried on without large and freely accessible markets for the distribution of the product. All restrictions of the market correspondingly restrict production, which in turn raises the unit cost of production and the prices to the consumer, who in consequence cannot obtain as large an amount of the necessities or the amenities of life as he could under full marketing freedom. Under the present form of union among the American states there is no discrimination in favor of or against the trader of any state on any of the common carriers, in any of the ports, or in any of the markets of any other states. The markets for all products are continental in their scope and are absolutely free and unrestricted. This freedom is the basic condition making possible the big business in the United States which is the admiration of the world and the source of the general economic welfare of American citizens.

When an attempt is made in the states members of the League of Nations to achieve a similar result, a large number of obstacles immediately present themselves. The supremacy of national power over the power of the central organization, as in the first

form of organization in America, keeps the states members of the League always extremely jealous of one another and causes constant discrimination against the trade of one another through tariffs and other restrictions, thus limiting markets to a considerable extent within narrow national boundaries. The ownership of industries is jealously kept as much as possible within the citizenship of each state, and the only possibility of real large-scale production is sought through "international cartels" or trust agreements between the manufacturers of the different states. These prove a very loose, unstable and unsatisfactory method for achieving unified large-scale production and marketing.

These national jealousies among the states members of the League cannot be removed until the central organization has the full authority and the full power to regulate commerce among the member states. And it cannot have this authority and power while the armaments are in possession of the individual states and the central organization is without armament, thus leaving the trade of the weaker member states by sea and land in a large measure at the mercy of the stronger member states. Under such a form of organization real freedom of trade among the states of the American Union would have been impossible, and the consequent benefits of such freedom to the whole citizenship could not have been achieved.

### *Free Access to Raw Materials Makes Possible Manufacture at the Most Advantageous Points With Consequent Benefit to All*

Fully as important as wide and free markets for the vigorous growth of the manufactures and trade so essential to the general wellbeing of all the people, is an equally wide and equally free access to all the raw materials necessary to operate such industries. Under the second form of organization of the states of America no restrictions or duties are permitted on the free export or import of any commodity from one state to another. This makes possible the selection of any state where the most advantageous location exists, for the establishment of industries for the supply of all the states. These advantages may be due either to the proximity of raw materials in the heavy industries, of markets in the light industries, or of labor supplies for manual industries.

Thus steel for all the states is manufactured largely near the coal and ore sources in Pennsylvania and the Southern Appalachian regions. Furniture for the whole federation is largely manufactured in the Michigan territory convenient to the northern hardwoods. Building lumber is to a great extent manufactured for the whole country near the vast forests of the North Pacific Coast.

So in the lighter industries, clothing for all the states is largely manufactured in New York and Chicago, where the largest markets and the largest

available supplies of skilled labor are to be found. The electric industry for the whole federation, likewise, is located largely in New York State and Pennsylvania. It relies with absolute assurance upon the unrestricted flow of its vital copper supplies from the great southwestern states.

This freedom of access throughout the states of the federation to all raw materials from any state, without any restrictions or discriminations by that state in favor of its own citizens and against the citizens of other states, is a further basic condition of the large-scale manufacture which produces under the most favorable circumstances and so reduces the costs to the consumer, that the citizens of every state obtain their necessities and their luxuries at a far lower cost than would be the case, if every state jealously restricted its raw materials to its own citizens and placed hampering restrictions or even prohibitions upon the access to such materials by the citizens of the other states.

Comparing this situation with that of the states members of the League of Nations, it is only necessary to revert to the difficulties caused by the location of the raw materials of the steel industry of the Rhine region partly in Germany and partly in France; to the colonial policy of some of the member states in restricting the access to raw materials and to markets in their colonies to their own citizens; or to the "imperial preference", which is the policy of the commonwealth of nations which

are members both of the British Empire and of the League of Nations.

*Unrestricted Freedom of Investment Removes Interstate Friction Caused by "Vital Interests"*

It is evident that, if the ownership of stock in the United States Steel Corporation, whose properties are to a great extent located in Pennsylvania, were confined to the citizens of that State, the enormous importance of that industry would soon cause it to become a "vital interest" of Pennsylvania; and it is also evident that other states, where similar state companies were owned exclusively by their citizens, would not look with a friendly feeling upon the invasion and capture of their markets by the Pennsylvania company. It is very likely that the owners of these smaller companies, being men of wealth and political influence, would be able to direct the "policy" of their state governments in a number of ways toward fostering the home steel company and toward discrimination against the "foreign" company. This so-called "policy" of protecting its "vital interests" by such a state would arouse the resentment of the Pennsylvania owners of the United States Steel Corporation, who would exert a large influence upon the state government to protest against the discrimination and would thus cause friction between the states.

Under the second form of organization in the

United States, however, no discrimination of any kind is permitted against the investors of any state in regard to the investment of capital in any other state of the Union. The result is, that the ownership of such a great company as the United States Steel Corporation is pretty evenly distributed among all the investors of all the states, and the corporation thus ceases to be exclusively a Pennsylvania enterprise and to enlist the jealous protecting care of the government of Pennsylvania, or to incur the jealous resentment or discrimination of any other state of the Union.

There is no jealousy among the states of the American federation as to the ownership of any enterprise. No state backs an enterprise as against another state. Commercial quarrels between states are thus prevented; and the wholesome spirit of fair treatment and confidence thus created throughout the states toward any enterprise, regardless of the state in which it is located, is one of the principal underlying causes of the vast growth and success of American business.

A further economic benefit of the freedom of investment throughout the states of the federation is, that the states in which capital is scarce are able to draw freely for the development of their natural resources upon the states where capital is abundant. Investors have no hesitation whatever toward investing in an enterprise located in any of the member states, without regard to their own state citizenship, because they know that the federal

government through its supreme court will enforce as fair and equal terms for their investment in another state as those afforded to the citizens of that state. As a result of this freedom the surplus capital of the eastern states has been available in developing the western states far more readily and generously than would have been possible under the loose "league of friendship", or alliance of governments only, which constituted the first form of organization in America. The growth and development of the western states, in turn, have contributed largely to the welfare of the people in the eastern states through their superior facilities for agriculture, mining and forestry; and the citizens of every state have therefore greatly benefitted by the economic freedom of investment that prevails throughout the whole federation of states.

### *Benefits of a Uniform Monetary System and Unified Gold Reserves*

Under the first form of organization in America each state made its own currency issues and provided, or more frequently failed to provide, for their security and redemption. The same confusion of monetary systems at present prevails among the states members of the League of Nations. In both organizations, however, it must be admitted that the unsatisfactory working of the numerous currency systems was in a large measure due to the war strain which prevailed at the time.

Under the form of "more perfect union" which

now exists in America it has been possible to unify the banking system of all the states, and to provide a single form of currency protected by a unified gold reserve for all the states. This arrangement is of the utmost economic benefit to the citizens of every one of the states. It frees trade everywhere of the necessity of valuing the various currencies in terms of one another, or with reference to gold. It does away entirely with the necessity of gold shipments from state to state in settlement of trade balances. It abolishes the necessity of manipulating the discount rates in each state for the purpose of protecting its isolated gold reserve.

The harmful effects upon the business activities of the states members of the League of Nations of the constant necessity under which their governments and their central banks lie of protecting or increasing the gold reserves upon which their currencies rest, by varying the rates of discount, by placing obstacles in the way of gold shipments or at times even prohibiting them, and by using every effort to increase their exports and to restrict their imports, are well known to economists.

### *Freedom of Migration Stabilizes Employment and Wages, and Promotes General Welfare*

The Constitution of the United States (Art. IV, Sec. 2) reads: "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." This was elaborated more fully in Article XIV, Section 1: "All persons

born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In accordance with these provisions every citizen of any state may travel or dwell in any state that he chooses, without restriction. The result of these provisions is, that there is a greater mobility among the workers in the states of this federation than there is among the states members of the League of Nations. Of course, this is partly due to the fact that the English language is the official language throughout all the states, and that most of the citizens, speaking this language, find it easy to locate in any state of the Union. The mobility of the workers tends greatly to minimize the amount of unemployment in all of the states and is thus of great economic benefit to all. So great is this mobility that during the summer months labor follows the course of the harvest demand from the states of the extreme Southwest up through the country and even into the Canadian Northwest, thus meeting the peak need for labor in all of these sections without leaving a large amount of unemployment at other seasons.

When Henry Ford recently increased his work-

ing force in Michigan by thirty thousand men, he was able to draw upon the skilled labor, not only of Michigan, but of all the states from the Atlantic Seaboard to the Rocky Mountains. In short, with the mobility of labor and its absolute freedom of movement throughout the states of the Union, there can be no great scarcity of labor in any state while another state is suffering from a surplus number of workers. There is a large contingent of workers, especially of young workers, in America, who think no more of going two hundred to five hundred miles to secure employment, than the average worker of the states of Europe or Asia thinks of going twenty to fifty miles. The result of this greater mobility, made possible by the fundamental Constitution of the states, is a greater stabilization of employment and of wages than in the states of Europe or Asia, with a consequent evenness of commerce and of general welfare among the population.

It must be admitted that there are restrictions of a non-political character upon the mobility and the adaptability of the workers of the United States, that have a tendency to neutralize the economic benefits of this freedom of migration guaranteed by the present form of political organization of the states. The restrictions and rules of labor unions in America, as in Europe and elsewhere, tend to prevent to some extent the mobility of labor, both as to change of location and as to change of occupation; but these restrictions are not as

universal nor as rigidly enforced in America as they are in the states members of the League of Nations, where their hampering effect upon the general welfare is much more severe.

# CHAPTER VIII

## THE CIVIL WAR IN AMERICA

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure.—ABRAHAM LINCOLN

Although, as stated in a previous chapter, there have been about seventy-five controversies that were decided by peaceful, judicial methods, between the states united in the American federation; there was one controversy that could not be settled by pacific means. The record of almost a century and a half of unbroken peace among the large number of states in the American Union has been sadly marred by one unsolvable controversy that deluged the states in a sea of blood over a period of four years. In this supreme crisis the general organization failed to keep the peace among the states.

Will the League of Nations likewise fail to prevent war among the member states when its supreme test comes? Does the American civil war throw any light upon the course that the League should pursue, in order to avoid a similar

catastrophe? May the terrible experience of a portion of the human race be useful in preventing a far more terrible experience of the whole human race? Can another World War be prevented?

It is for the purpose of holding high the torch of history to light the road to peace through the coming centuries, that this study of the American civil war is inserted. And in order to prepare the reader for the comparison that is to be made between the states of America and the states of the League, and for the purpose of directing the reader's thoughts throughout the discussion of the civil war to the possible application that its lessons may have in a similar situation confronting the League, it is perhaps best to state at the outset that a parallel will be drawn at the close of the chapter between the freedom-slavery controversy in these states and the capitalism-communism controversy in the states of the world.

### *The Fundamental Issue a Moral Question Existing From the Establishment of the Union*

No impartial student of American history can doubt that the civil war was caused by the controversy between the Northern and the Southern groups of states on the subject of slavery. I am well aware that Jefferson Davis, the President of the Confederate Government, has contended in his elaborate work on "The Rise and Fall of the Confederate Government", that the fundamental issue between the states was the right of secession, and

that the slavery question was only incidental; but it seems evident to the average American at this date that the desire of the Southern States to secede would not have been formed, if there had been no controversy about slavery, and that the Southern States adopted the contention regarding the right of a state to secede from the Union as the only means that they could see by which the institution of slavery would be free from the danger of attack by the anti-slavery agitation of the Northern States. If this is the correct interpretation of the history of the period, then the "states' rights" controversy was subsidiary to the slavery controversy, and was merely the means by which the Southern States sought to uphold their position in the latter. The Southern States cared nothing about secession or the right to secede for their own sake, but reluctantly adopted this contention of their leaders as the justification of the steps which they were taking to preserve the institution of slavery in their territories. The real subject of the quarrel was the preservation or the abolition of slavery; and the "states' rights" discussions were subsidiary, as a means to an end.

The first thing to be noted regarding the slavery controversy is, that it arose from a moral question. Whether it is morally right or wrong for one human being to treat another as his absolute property, was the question on which the inhabitants of the United States had been sharply divided, even in the colonial days before the separation from Great

Britain. Not all of those who considered slavery morally wrong lived in the northern colonies. Nor did all of those who considered slavery morally right live in the southern colonies. The great Washington, although living in a slave colony and himself owning slaves, came to consider the institution wrong and freed his slaves. On the other hand, there are instances of prominent men in the northern colonies, for instance Jonathan Edwards, who considered slavery morally right and who owned slaves.

The second point to be noted is that, while the slavery question was fundamentally a moral question, it was inextricably mingled with the economic question of the profitableness of slave-holding. It is always very difficult for us poor mortals, even with the best of intentions, to keep from shaping our moral convictions in accordance with our pecuniary interests; and it is very difficult now to say how far the conviction of the moral right or wrong of slave-holding was due to the economic profit or lack of profit for the slave-holder.

### *The Controversy Develops on Geographical Lines*

From the very beginning it was clear that slavery was more profitable in the South than in the North. This was due, first, to the fact that the African negroes, coming from an equatorial region, throve better in the warmer southern climate; and, secondly, to the fact that the cultivation of cotton, the South's great crop, was especially adapted to

the use of slave labor. On the contrary, the trend of the North toward manufactures and commerce rendered slavery unprofitable in most instances, and in others practically unworkable. Slaves could not easily be held in large cities, if they wanted to escape; nor was it safe to ship them as sailors in ships calling at foreign ports.

As a result of this economic motive the practice of slavery and the moral sentiment in favor of slavery gradually became localized in the Southern states. And, for the same reason, the practice of the Northern States tended toward the abolition of slavery within their territories, with the consequent strengthening of the anti-slavery sentiment among their citizens.

### *The Articles of Confederation Ignored the Slavery Question*

This was the situation when the first "league of friendship" was formed among the thirteen "free and independent states". The Articles of Confederation, the first form of organization among the states, practically ignored the slavery question. This could be done at that time, because the means of travel between the various states were so primitive that the escape of a slave from one state to another was practically impossible; and the intercourse of one state with another, and even the knowledge of the citizens of one state regarding conditions in another state, were extremely limited and slight. During the constitutional convention Madison

could say that he knew less about conditions in Georgia than he knew about conditions in a remote foreign country.

Even in the Articles of Confederation, however, there are two instances which reveal the existence of the conflict of sentiment on slavery among the citizens of the various states. The existence of slavery and the denial of political rights to the slave are indicated in a phrase of Article IV, that "the *free* inhabitants of each of these states . . . shall be entitled to all privileges and immunities of *free* citizens in the several states". The right of a master to travel with his slaves in a free state without risk of the liberation of his slaves, and his right to take them out of such state when he returned home, were specifically laid down in the latter part of the same article, although slavery is not mentioned by name. It is provided that the people of each state shall enjoy in any other state "all the privileges of trade and commerce, subject to the same duties, imposts and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant."

### *The Constitution Attempted a Compromise*

The deep-seated slavery controversy between the states could not be settled merely by ignoring it, and the statesmen who gathered in Philadelphia in

1787 to frame a central organization more adequate to the preservation of peace among the states attempted to settle the issue by compromise.

The subject of slavery forced itself into their discussions from the very outset of the convention. The first question that demanded solution in the work of forming a "more perfect union" among the states was that of a fairer basis of representation than merely one vote for each state, whether large or small; and the discussion regarding representation proportional to population immediately brought up the question, whether slaves were to be counted in apportioning representation in the central assembly. After prolonged discussion a compromise was reached, by which three fifths of the number of slaves should be added to the number of free citizens in arriving at the basis of representation in Congress.

The next point at which the controversy forced itself upon the framers of the Constitution was in the discussion regarding the African slave trade. The northern statesmen, feeling the growing condemnation visited by the opinion of the world upon this traffic, were strongly in favor of its prohibition; but the Southern States felt the economic need of more slaves and would not consent to go into the Union, if the African trade were prohibited. Here again, after a keen discussion, a compromise was reached by which "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by

the Congress prior to the year 1808". (Art. I, Sec. 9.)

As a *quid pro quo* in this compromise the southern representatives agreed to the provision that a tax not exceeding $10 per person might be levied on such importation. This provision appears not to have been dictated primarily with a view to raising revenue for the central organization, but for the purpose of discouraging the African slave trade, rendering it less profitable economically, and so minimizing its extent as a preparation for its total prohibition in 1808.

The third point at which the slavery question entered the discussions regarding the new constitution, and one which later events proved to be of profound significance in causing the civil war, was the fugitive slave compromise. Even in the original "Articles of Confederation" the Southern States had insisted upon a provision which safeguarded their possession of slaves when on free soil; and in the framing of the second form of general organization they insisted that their position in the matter should be so clearly admitted and stated in the Constitutional as to leave no possible doubt. Both North and South were agreed upon the provision for compulsory extradition of criminals who fled into another state (Art. IV, Sec. 2). But the southern statesmen, knowing the feeling in the Northern States against the treatment of a fugitive from slavery as a fugitive "from justice", were not satisfied with the expression in the general ex-

tradition provision, stating that a person charged with treason, felony "or other crime who shall flee from justice" should be delivered up. They insisted upon an explicit reference to the case of a fugitive slave (Art. IV, Sec. 2): "No person held to service or labor in one state under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

### *Fairly Equal Political Weight of Slave and Free States in the Beginning*

The political weight of the group of free states and of the group of slaves states at the time of the constitutional convention was fairly equal; but both sides felt very keenly the desire to acquire a preponderating power in the central organization, and at the same time to guard themselves against the possibility that their opponents might gain such preponderance. The North was intent upon the final abolition of slavery, while the South was intent upon preserving this institution. This phase of the slavery controversy explains the peculiar wording of the next section of the Constitution (Art. IV, Sec. 3): "New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state."

In the admission of new states formed out of the

unorganized territory held by the central organization as a unit each side hoped to gain additional adherents of its cause in the Senate; but each side feared an attempt on the part of the other to increase its political weight by breaking up some of its states into two or more states, thus giving it that much additional representation in the Senate of the United States.

### *Each Side Attempts to Increase its Political Weight in the Union*

A final point in which an attempt at compromise between the free states and the slave states in the formation of the Constitution may be noted consists in the general reservation to each state of all matters that were not specifically entrusted to the authority of the central organization (Articles IX and X). Apparently an attempt was made to leave the question as to whether an existing state should be a free state or a slave state to the decision of that state itself; but when it came to the status upon entering the Union of any new state formed out of the territory owned by the central organization as a whole, the provisions of the Constitution are vague and obscure, probably because the hopes and intentions of its framers were contradictory. Article IV, Section 3, reads: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;

and nothing in this Constitution shall be so construed as to prejudice any claim of the United States or of any particular state." But suppose that one state should claim that all territories, upon becoming states, should be open to the admission of slavery, and another state should claim that all territories, upon admission as states of the Union, should prohibit slavery on their soil? Here the compromise failed.

### *The Growing Intolerance of the Free and the Slave Sections on the Slavery Question*

The efforts of the pro-slavery and of the anti-slavery sections to gain additional weight in the central organization caused constant friction between the two sections, and this friction resulted in a growing intolerance on both sides. The pro-slavery section became firmly fixed in the policy that slavery must be constantly extended over more territory, while the anti-slavery party as firmly adopted the policy that slavery must be restricted to its existing territory and eventually abolished throughout the Union. As the new territories owned by the general organization were opened for settlement and grew populous enough to apply for admission as states of the Union, both sides bent every effort to have such states admitted as members of their group; and, in order to gain a majority of the either slave-holding citizens or of anti-slavery citizens, each party resorted to a forced

colonization of these territories. This policy caused frequent clashes and in some instances bloody riots between the two parties.

*The Missouri Compromise*

Peace-loving statesmen in both camps, seeing the dangerous drift that the slavery controversy was taking, attempted a compromise by drawing a line across the contested territory in the West along the parallel of 36° 30′ north latitude, and having it legally settled by Congress, that territory to the south of this line should be open to slavery, while that to the north of it should be free soil. While this compromise delayed the growth of the controversy to some extent, it did not settle the issue. Neither the pro-slavery nor the anti-slavery forces were satisfied by it, and in the course of time both sides refused to abide by it.

The South claimed that the Constitution of the United States, in providing for the compulsory return of a slave who should escape into free territory, recognized the legitimacy of slave-holding, and by consequence the right of a master to hold his slaves in any part of the United States. The slave owners, therefore, insisted upon the right to migrate with their slaves into the public domain to the north of the compromise line.

The North, on the other hand, claimed that the territory comprising the State of Texas, although south of the compromise line, had been free soil under the earlier ownership of Mexico, and that it

should therefore remain free soil. It was in regard to Texas that the so-called "squatter sovereignty" controversy became acute; the South claiming that the question of slavery or no slavery in a territory applying for admission as a state of the Union was rightfully subject to the decision of the inhabitants of that territory; while the North claimed that, as Congress was given in the Constitution of the United States the right to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States", the determination as to whether slavery should be permitted or forbidden within a territory applying for admission as a state of the Union clearly rested with Congress acting for the good of the whole Union.

The South, feeling its growing weakness in the general organization at Washington, owing to the more rapid increase of population in the North, naturally desired the question of slavery or no slavery in a new state to be decided by the inhabitants of that state alone; while the North, feeling its growing preponderance in the central organization, just as naturally wanted the decision of this question to rest with Congress. This is the question of "states' rights" upon which Jefferson Davis dwells so much in the book mentioned above, and which he would have his readers believe was the real cause of the civil war.

Underneath the gradual shifting of preponderant weight in the central organization to the free

Northern States and in a measure the cause of the admission as free states of much of the contested territory lay the fact previously mentioned that slavery was not economically profitable outside of the cotton belt. This fact is strikingly shown by statistics indicating that, for some decades prior to the civil war, the number of slaves had been diminishing in the so-called "border slave states", whose climate was not suitable for the cultivation of cotton.

*The Bitterness Preceding the Civil War*

The bitterness engendered between the free and the slave states through the strenuous contests for the acquisition to their ranks of the new states, carved out of the lands held by the United States as a whole, was greatly increased by a decision of the United States Supreme Court, which threw the controversy from the legislative branch of the central government and the strife for preponderant representation in that branch, to the judicial branch of the government. An officer of the United States Army, being ordered from a slave state to a post in a free state, took with him a slave. After a considerable period of residence in the free state the slave, Dred Scott by name, probably advised or aided by northern abolitionists, sued for his freedom on the ground that slavery was forbidden by the laws of the state in which he was residing. The case was carried to the United States Supreme Court, which decided that a master could take his

slave into free territory without losing his title of ownership.

*The Dred Scott Decision*

This decision caused the utmost consternation and resentment throughout the North. In accordance with it the North feared the introduction of slavery through the migration of slave-owners with their slaves into any or all of the free states, so that in the end all of the states would become slave states. A number of the Northern States tried to protect themselves against this possibility by the passage of so-called "free soil" laws, declaring that any person entering their territory was a free man and that slavery would not be recognized by the courts of the state.

This form of retaliation, in turn, greatly incensed the South. The statesmen of that section claimed that these laws were in violation of the Constitution, which provided for the return of a fugitive slave upon demand of his owner. Judges in the courts of the free states and officials of these states refused to take any action upon the demands of southern slave-owners for the return of their slaves. A bitter agitation arose in the North for the absolute abolition of slavery by confiscation and without remuneration to the slave-owners. The abolitionists of the North caused still greater bitterness in the South through their policy of not merely ignoring the slave-owners' demands for the return of their fugitive slaves, but of organizing secret aid to enable

the escaping slaves to cross the northern territory into Canada, where they would be wholly safe from danger of recapture.

*The Threat of Secession in the South*

The South again felt itself defeated in its appeal to the judicial branch of the government, as it felt itself outnumbered more and more in the legislative branch. To the Southern statesmen there seemed to be but one method by which their institution of slavery could be saved and rendered free from attacks of the abolition party of the North, and this method lay in the complete severance of the relations of the Southern States with the Union. The Constitution of the United States is silent on the question of the right of a state to secede from the Union; but the southern statesmen reasoned that, inasmuch as the people of each state had originally decided for that state to accede to the Union, the people of each state were competent to repeal that decision on behalf of their state and so to secede from the Union. The secession sentiment was strongest in the State of South Carolina, although there was much sympathy for it in several of the neighboring cotton states in which slavery was deeply intrenched.

The Northern States, being more largely commercial in their activities, and being more clearly aware of the innumerable and vital interests which in almost a century of time had knit the states into a common country, were absolutely opposed to the

destruction of the Union. They denied the right of secession, claiming that the Constitution was ratified by the people themselves for the very purpose of excluding any action by the state governments in regard to the general organization.

By this time the bitterness between the two sections had grown so great that physical clashes were bound to occur, and did occur,—clashes that under other circumstances could have been disposed of as mere incidents; but which, with the passions on both sides thoroughly aroused, led inevitably to the civil war.

### *The Events Leading Up to the Civil War*

Mention has been made of the armed clashes in the Kansas-Nebraska territory, incident to the forced settlement of that section by the violent partisans of the slavery and the anti-slavery causes respectively, each party with a view to gaining the region upon its admission to statehood for the ranks of the slave states or of the free states. Extremely active in these riots was an abolitionist named John Brown. This man later conceived the plan that slavery could be abolished by encouraging the slaves to revolt against their masters throughout the South, and by aiding them in their revolt against slavery with the moral and material support of the anti-slavery party in the North.

### *John Brown's Raid*

With this plan in view he organized a small

armed band and attempted to arouse and to arm the first of the slaves by a raid at Harper's Ferry, W. Va., in which he hoped to seize the United States arsenal located at that point, with its stores of munitions of war. While the raid was wholly unsuccessful, the resentment of the State of Virginia (of which West Virginia was at that time still a part) against an armed invasion of its territory was profound. The State immediately began to call its citizens to arms for the purpose of protecting its soil against further armed aggression. Feeling ran high throughout the South as a result of the raid, and the statesmen of that section were more violent than ever in their contention for the right of the slave states to secede from the Union.

*The Election of Lincoln as President*

In the midst of this tense situation of antagonism between the slavery and the anti-slavery parties the time came for a presidential election; and the North succeeded in electing Abraham Lincoln, whose opposition to slavery was strong and well-known throughout the South, and who was also known to be opposed to the so-called "states' rights" of secession. Southern statesmen had prior to the election freely characterized Lincoln as a "dangerous" man and had freely predicted that his election would be followed by the secession of the Southern States from the Union.

The views of Lincoln were clear and uncompromising. "My opinion is", he said, "that no state

can in any way lawfully get out of the Union without the consent of the others". "The power confided to me will be used to hold, keep and possess the property and places belonging to the government and to collect its duties and imposts; but beyond what may be necessary for these objects there will be no invasion, no using of force against or among the people anywhere."

*South Carolina Passes an Ordinance of Secession*

True to the prediction of southern statesmen, the election of Lincoln to the presidency caused the State of South Carolina to pass an ordinance, repealing the act authorizing the accession of the State of South Carolina to the United States, and declaring that all political relations between the State of South Carolina and the United States had ceased.

The violent slavery leaders who forced the state to this decision found out immediately, that the rending of ties which had been growing more and more intimate for over a century was not so simple as that. Charleston, the port and principal harbor of South Carolina, was controlled by United States forces. The federal laws providing for the collection of "duties and imposts", alluded to by Lincoln in the above quotation, were administered directly by federal officials appointed by the central authority and acting without the intervention of the state or of its officials.

The government of South Carolina claimed that,

since the state had seceded from the Union, the general authorities no longer had any right to collect duties on goods imported into that state. Lincoln did not admit that the State of South Carolina had a legal right to secede from the Union and refused to recognize the secession. The possession of the harbor meant the ability to enforce the payment of duties upon imports coming into the harbor. The State of South Carolina was, therefore, logically led to demand the surrender to it of the fortifications built upon its territory for the express purpose of its protection.

*The Difficulty of Determining the Aggressor*

At this point it may be well to pause a moment and consider how difficult of application any formula for peace must be that depends upon the determination of the aggressor in war. "No two writers", says the noted historian, Albert Bushnell Hart, in the introduction to Volume 19 of *The American Nation,* a volume devoted to the causes of the civil war; "no two writers, even occupying about the same standpoint, will agree as to the character of all individuals or the question of aggression." The State of South Carolina considered the attempt to collect tribute from her citizens by the United States, which she considered now as a foreign country, as an act of aggression upon her sovereignty and independence. The central administration, denying the legal validity of the act of secession on the part of South Carolina, insisted

that the collection of the revenues was strictly legal; that any forcible opposition to their collection was rebellion; and that any attack upon the forces in Charleston harbor would be an act of war against the United States.

*The Weakness of the Federal Armament*

Admiral Chadwick, the author of the exhaustive volume on *The Causes of the Civil War,* mentioned above, is strongly of the opinion, that the Southern States would never have made the attempt to secede and that the civil war would not have occurred, if the federal authorities had kept the armament of the United States up to an adequate point. "There was but a nucleus of an army", he writes. "The navy was moribund." The United States forts in the South were inadequately manned. Forts Jackson, St. Philip, Morgan, Pulaski and Sumter were without garrisons. Forts Pickens, Moultrie, Monroe, Hampton Roads were insufficiently garrisoned, according to a report of General Scott, Chief of the Army. Scott's advice was, that "all these works should be immediately so garrisoned as to make any attempts to take any one of them by surprise or coup-de-main ridiculous".

Especially in the harbor of Charleston it is to be noted that the United States forts were very poorly manned. The small and inadequate garrison in the harbor under Major Anderson was placed in one of the weaker and less defensible forts, Ft. Moultrie; while the strongest of the forts,

Ft. Sumter, was neither completely constructed, equipped with its proper quota of guns, nor had it any garrison.

*The Last Attempt to Avoid Bloodshed*

In the midst of the violent discussion between the authorities of South Carolina and those of the general organization at Washington, regarding the secession of the state and the demand for the surrender of federal property within its borders, a verbal arrangement was made that neither side would take any provocative action in Charleston harbor. South Carolina soon became bolder in her attitude, when the sympathy existing among the slave states caused a number of other states to join her in passing secession ordinances. The authorities gradually cut off all intercourse between the forts in the harbor and the City of Charleston, leaving Major Anderson and his men in danger of reduction by starvation. Not only so, but Ft. Moultrie in which he was stationed was a weak defense which could be readily reduced by the stronger Ft. Sumter, should that fort be occupied by South Carolina men.

Under these circumstances Major Anderson transferred his forces to Ft. Sumter. This move was considered by the South Carolina forces as a breach of the agreement to maintain the status quo, and they redoubled their efforts to cut off supplies from that fort. The North tried to relieve the fort with supplies sent by sea; but the vessel carry-

ing the supplies was fired on and turned back by Southern forces, and Charleston harbor was effectively blocked by sinking a ship across its narrow channel entrance.

Finally the tension between the two sides became so great, that a formal demand was made upon Major Anderson for the surrender of Ft. Sumter. The demand was refused. The fort was attacked and reduced. President Lincoln called for seventy thousand volunteers, and the civil war began.

### *The Permission of Secession Would Not Have Solved the Slavery Controversy*

Lincoln voiced the profound and general sentiment of the Northern States, when he said that this Union could not permanently endure, half slave and half free; and especially when in the immortal Gettysburg address he expressed the determination to preserve the Union intact: "Now we are engaged in a great civil war, testing whether that nation . . . can long endure". There were, however, other influential men, even in the Northern States, who believed that it was a mistake to try to keep the Southern States in the Union against their will, and who thought that the best way to settle the slavery controversy was to allow the South to secede. General Scott, senior officer in the army, said: "I would say to the seceding states, 'wayward sisters, depart in peace'."

"Depart". There's the rub. Neighboring lands cannot depart from each other: they must live to-

gether. Even if the secession of the Southern States had been permitted by the United States, the borders would still have been contiguous. Slaves escaping into the free states would still have aroused the demand for their return by the South. If this source of friction and war between the two sections could not be removed, when both sides were associated under a common general organization and had a common Supreme Court to which they might appeal; how much less would be the likelihood of avoiding constant friction and ultimate warfare, when there was no common council table at which they might sit down, and no common judgment bar before which they might plead their respective causes and seek a peaceful adjustment of their differences.

If the anti-slavery advocates could not be restrained from encouraging and aiding the slaves to escape from their masters in sister states of the Union, how much less could they have been prevailed upon to stop this policy, if there should be no common bond of union or interest between the free and the slave sections?

It is evident that the friction on the slavery question between North and South would have constantly increased, if secession had been permitted; and while the war between the sections might have been postponed by that action, the interval would have been used on both sides in building up a formidable armament and in organizing the entire life of the citizenry for the approaching war. In

the end a war more bloody and prolonged than that which actually did occur would have been the result.

There would also have been added to the bitterness of the slavery controversy numerous other causes of friction resulting from the interminable negotiations that would have been necessary in trying to unscramble a union of almost a century's standing. To call attention to but one item, what satisfactory solution regarding navigation on the Mississippi River could ever have been reached between an independent North and an independent South? If Kentucky, many years before, contended that it would be necessary for her, in the pursuit of her vital interests, to conquer the territory of Louisiana in order to assure her access to the sea, unless the United States should acquire that territory; one can readily imagine the attitude of the states in the upper Mississippi basin toward the prospect of a lower Mississippi controlled by an independent and hostile nation. The reader who wishes to form an adequate conception of the result of such an arrangement may obtain it by a study of the history of the Danube River in Europe.

### *Parallel Between the Freedom-Slavery Question and the Capitalism-Communism Question*

In a comparison between the states united under the American Constitution and the states united under the Covenant of the League of Nations, the justification for this rather lengthy analysis

of the one quarrel among the former group of states that could not be settled by peaceful means, but resulted in a terrible, devastating civil war, must be that the states united under the League Covenant are face to face with a similar controversy, and it is hoped that the previous discussion may assist the League states in escaping a like cataclysm.

Long before the founding of the League the controversy between capitalism and socialism was a more or less troublesome factor in the life of many of the states now members of the League. During the World War the government of one of the greatest of the countries and by far the most extensive country of Europe was seized by socialists of the most extreme type, and communism was established. This action began to shape the capitalism-communism question along geographical lines, just as the freedom-slavery question in America developed along geographical lines.

Both controversies arose from deep moral differences among the people. To the anti-slavery party in America the abolition of slavery throughout the United States seemed to be a religious duty. Similarly, it has often been remarked by observers of the communists in Russia and elsewhere, that their enthusiasm for the spread of their system throughout the states of the world is almost comparable to a religion among its adherents. "The world revolution" is freely asserted by communist leaders to be their goal, just as the total abolition of slavery throughout the American states was the

avowed object of the abolitionists. Both the slave-owners and the abolitionists in America considered their side of the controversy the only morally right position. A similar moral conviction exists, or is rapidly coming into existence, on the part of the capitalists regarding capitalism or individualism, and on the part of the communists regarding socialism or collectivism.

### *The First Form of Organization in Each Group of States Ignored the Controversy*

A further point of similarity in the course of the history of these two controversies is, that the first form of organization among the states of each group ignored the profound antagonism of the two parties. This is only what might have been expected, when it is considered that the American Articles of Confederation were formed in the very midst of a great war and the Covenant of the League of Nations immediately after the close of a much greater war. Both the Articles and the Covenant were formed at a period of great public excitement and were necessarily completed in great haste.

It is significant that, of the two great states that have remained outside the League of Nations, one is the foremost representative of capitalism and of extreme individualism, and the other is the foremost representative of socialism and of extreme collectivism. It is altogether probable that, before these two great nations can be persuaded to enter

the League, its entire form of organization and structure will have to be materially changed. When the time comes for the second form of organization of the states of the League, it will be well for the statesmen of the League to ponder carefully, what may be the result of temporizing with and of attempting to make a feeble compromise on the capitalism-communism question, as history has shown that result in the temporizing and compromise of the American states on the similar freedom-slavery question.

### *The Possible Course of the Capitalism-Communism Controversy*

Will the states united under the Covenant allow the capitalism-communism controversy merely to drift, as the states united under the American Constitution allowed the freedom-slavery controversy to drift? In order to persuade against the evil of such an ostrich-like course certain facts may be here set down, facts which the writer believes will not be denied by either side. Socialism, especially in its most extreme and energetic form of communism, is profoundly convinced that capitalism is so strongly intrenched behind vested rights, legal barricades, constitutional discriminations, etc., that the system cannot be changed by orderly, peaceful, and legal methods in the capitalistic countries. Communism is profoundly convinced that it cannot obtain a fair plebiscite at the ballot box. As a consequence of this conviction it is the avowed purpose of commun-

ism to overthrow capitalism by a violent overthrow of existing governments and the seizure of governmental powers by its partisans, for the purpose of establishing communism in each country, and with the final object of uniting all states, thus rendered communist, in a great international organization or World Soviet Union. Communism insists upon its right to force its system upon all states, just as slavery insisted upon its right to introduce its system into all the American states.

*A Division on Geographical Lines*

It has been noted above, that the two opposing systems of individualism and collectivism have already begun to divide upon geographical lines through the establishment of communism in the vast realms comprised within the Union of Soviet Socialist Republics. Some of the states members of the League lean toward socialism: Austria, Sweden, Germany and others have strong socialist tendencies. Should the League states in the future become approximately evenly divided between capitalism and socialism, the aggression and the bitterness on both sides of the controversy would doubtless grow far greater than it is at present, just as the bitterness between the free states and the slave states continued to grow in America. The geographical division of the states of the League into capitalistic states and socialistic states would doubtless bring the same danger of a disruption of the League as that which confronted the American

Federation in 1861. The group of states which felt itself dominated in the central organization by the opposing group would be very apt to take the same view that the Southern states in America embraced; namely, that the only method of preserving their cherished institutions against the attacks of their opponents consisted in their absolute severance of the bond of union with the other group.

But secession from the League by the socialist or the capitalist group of states would not solve the friction between them. After the long-drawn contest between the two systems, both sides would doubtless be thoroughly intolerant of each other. Capitalism would make a religion of freeing the "state-slaves"; socialism, of freeing the "wage-slaves". The resulting interference of each group in the internal affairs of the opposite group might eventually result, as it did in the United States,—in a great war between the two groups.

### *The Lesson for the League*

The lesson for the League in the sad experience of America is, that the capitalism-communism controversy should not be allowed to drift, but that earnest efforts should be made now, and patiently continued until successful, to find a common ground acceptable to both sides. Unless the capitalism-communism controversy is thus solved, the United States of the World, like the United States of America, will have a cancer gnawing at their vitals. A basis of harmony must be established between

capital and labor, by softening the harsh features of the capitalistic system until an arrangement is reached that will be wholeheartedly accepted by labor.

The slavery system in the ancient Roman Empire was softened by granting to the slave the right to buy his freedom. In the Middle Ages slavery was further softened into serfdom; and the harsh features of the latter system were gradually eliminated, until the present stage of freedom was reached. Slavery was thus abolished in Europe without the need of a war among her states. The same persistent, continuous efforts toward solution and adjustment, within the peace-preserving structure of the League, should be promptly inaugurated in regard to the capitalism-communism question. The author's views on establishing harmony between the two groups have been given in another work and need not be repeated here.

### *A Strong Central Organization to Keep the Peace While a Solution is Being Worked Out*

Admiral Chadwick, in the exhaustive study of the causes of the civil war mentioned above, arrives at the conclusion (with which the author thoroughly agrees), that the fatal mistake made by the United States consisted in not maintaining the strength of the central organization at a level sufficient to compel the maintenance of peace among the states, until time should have been afforded for the gradual solution of the slavery controversy by reasonable,

conciliatory and judicial methods. "There were but five points", says Chadwick, "in the further South of primary importance; the Mississippi, Mobile, Pensacola, Savannah and Charleston: two hundred men at each would have been ample to hold the positions for the time being; and being held reinforcements in any degree would later have been easy" . . . "It would have caused a pause even in the least thoughtful of the secessionists, had they felt that their coast strongholds were to be held and their ports to be in the hands of the enemy" . . . "With their coast forts in Union hands, warlike action on the part of the South is not conceivable."

This is the opinion not merely of a capable historian of thorough martial training, who had access to all the government archives; but it was the opinion of the federal officer in command of Charleston harbor, the crucial post, at the outbreak of the civil war. Major Robert Anderson urgently appealed to Washington for reinforcements, and added: "Nothing will be better calculated to prevent bloodshed than our being found in such an attitude that it would be madness and folly to attack us." Had the army and navy of the United States been adequate, the South could not have made war, and an indefinite period would have been given for seeking a solution of the slavery controversy by peaceful means.

The League of Nations faces the same danger of an internecine war among its members, whenever an approximately equal division of its member

states on any important question occurs, dividing the great states along geographical lines. The tendency of the violent capitalism-communism controversy to assume geographical lines with the possible accession to the soviet group of several socialistically inclined members of the League constitutes a danger of precisely this nature at the present time. Will the League learn the lesson of the American civil war, that it is vital to the preservation of peace that the central organization be adequately equipped to compel all states or groups of states to keep the peace, so that "the settlement or solution of disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means"?

# CHAPTER IX

## SHOULD THE LEAGUE STRUCTURE BE IMPROVED?

I send you enclosed the proposed new federal constitution for these states. . . . If it succeeds, I do not see why you might not in Europe carry the project of good Henry IV into execution by forming a federal union.—BENJAMIN FRANKLIN

After the states united under the Articles of Confederation in America had tested the efficacy of their first form of organization for a decade, the leading statesmen in practically all of the states were convinced that it was inadequate for the purposes of preserving permanent peace and harmony among the states and of promoting the general welfare. The League of Nations, too, has now completed its first decade. Are the statesmen who have been administering its affairs and those who have been observing sympathetically its efforts to assure permanent world peace, and to promote the general welfare of all peoples, satisfied that the organization is adequate for these purposes?

What shall be said of the defiance of the League's decision by the little State of Lithuania at Memel? What of the reversal of the League's decision at Vilna? What of the ten-year deadlock on disarma-

ment? What of the failure of the Protocol for mutual aid? What of the impotent, begging methods which the League authorities must use to raise a tiny skeleton budget? What of the arrears of China, Costa Rica, Argentine, etc.? What of the numerous tariff barriers among the League states producing constant friction? What of the impossibility of agreeing upon any method of applying the economic blockade?

Has not the first decade of operation under the Covenant shown such fundamental faults in the structure of the League, that the time has now come to attempt a thorough revision? The storm of war and post-war passion amid which the Covenant was framed has now calmed, and the whole world is at peace. A statesmanlike and unhurried review of the whole League organization is now possible, and it is not too early for this to be undertaken. In the twentieth century events move rapidly: history rides in an automobile.

Many friends of the League may feel that it is best to let well enough alone. With the proper spirit of good-will among nations, they feel that peace can be preserved and that the form of organization is secondary; without the spirit of good-will no form of organization, however perfect, can prevent war. It is freely admitted that good-will is vital. The vast majority of the people in all the nations must have the will to peace. But this is not enough. Unless this will to peace has at command adequate organs for its expression and en-

forcement, sinister or hot-headed men in high authority can still plunge the nations into war.

While it is true that, unless the locomotive throbs with innate fire, it will get you nowhere; it is also true that the most intense fire, applied to an unworkable locomotive, will get you nowhere. Both the power and the proper engine are necessary. Adequate fire must be applied to a first-class locomotive to move the train to its destination. So good-will and the intense desire for peace now existing throughout the world must work through an adequate political organization, in order to carry mankind to the great goal of world peace.

*The Weaknesses of the League Structure*

An adequate organization formed for the purpose of maintaining peace and harmony among the states of the world must have power to fulfill three functions. It must have authority to declare what shall be regarded as the just and equitable relations of states to one another; it must have authority to render all necessary decisions regarding the application of these laws to particular cases; it must have the ability to compel peaceable acceptance of and compliance with these decisions by all states.

For the performance of the first of these three functions the League is equipped with an Assembly consisting of one vote for each state member of the League. According to Article 5 of the Covenant, "decisions at any meeting of the Assembly shall require the agreement of all the members of

the League represented at the meeting". The futility of attempting to obtain any action among a body of over fifty members, when action can be had only by unanimity, has been fully demonstrated during this first decade of the League's career. If one wishes any further evidence of the futility of that method, it will be furnished by a review of the history of Poland during the period when she attempted to operate her legislature by the rule of unanimity. Add to this that, even after a unanimous decision by the Assembly, a unanimous ratification of the Assembly's decision by all the governments of the states members of the League is necessary before a regulation intended to establish justice in the relations of nations to one another becomes binding, and there will be no surprise at the statement, that this futile attempt at international legislation has in ten years accomplished practically nothing.

For the second function mentioned the League is equipped with a Permanent Court of International Justice. Except in certain cases of a strictly limited nature and of minor importance, and even in these cases only when a nation has consented to its jurisdiction, this Court cannot have jurisdiction in any controversy, unless both sides to the quarrel agree to submit the controversy to it. The Court has no authority to receive the complaint of an aggrieved state and to summon the aggressor to appear before it. Unless the aggressor himself agrees to submit the matter to the Court, this body

cannot take cognizance of it. The futility of this arrangement is evident on its face. It is merely playing at court procedure.

Suppose the criminal court in any metropolis of the world could not take notice of any crime unless both the victim and the criminal agreed to bring the matter to the attention of the court and to submit the case for its decision. How many cases of robbery, fraud or murder would come to trial? Would not such a court be the laughingstock of the criminal element? But this is precisely the situation of the Permanent Court of International Justice. If a criminal government does not choose to submit its conduct to the decision of the Court, that body cannot take jurisdiction of the case. It requires little knowledge of human nature to be assured that a nation which is pursuing a policy of aggression or injustice toward another will never submit to the Court its controversy with the state or states which are the victims.

For the fulfillment of the third function mentioned above the League is equipped with a Council consisting of members representing the principal allies and of a certain number of rotating members representing the remaining states members of the League. This body, like the Assembly, can act only by unanimity. An exception is indeed made to the effect that this unanimity does not require the votes of the states parties to the controversy. This body, while ostensibly the executive branch of the League, in reality acts merely as a board of

voluntary conciliation in controversies between states, and the utmost extent to which its authority extends is the issuance of a report making recommendations for the settlement of a controversy, or for action by the member states. It has no common force at its disposal to enforce the decisions of the permanent court, even assuming that the court had adequate authority to take up and decide controversies threatening war between states; and the procedure by which the Council may obtain united "armed forces to protect the covenants of the League" is so prolonged, so complicated and so uncertain, that it is doubtful whether the Council could complete it in an emergency in time to avoid being confronted by a *fait accompli.*

### *Similarity to the Weaknesses of the Confederation in America*

It will be noted that the weaknesses of the League structure in each of these three principal functions are very similar to those which existed in the United States Congress under the Articles of Confederation. In the legislative branch the arrangement giving each state one vote and the requirement of nine votes out of the possible thirteen before any action of importance could be taken (which practically meant unanimity because of the very irregular attendance in the Congress) resulted in the complete paralysis of that body.

In the judicial branch the first form of organi-

zation in America was even more imperfect than the Permanent Court of International Justice. The Articles of Confederation had progressed no further than the methods of the Hague Court of Arbitration, and they provided only for the selection of arbitrators *ad hoc,* after a controversy between states had grown to threatening proportions. The American Articles of Confederation, however, did authorize this tribunal to act upon the application of an aggrieved state and to compel the appearance of the aggressor state; or, in the event of that state's refusal to appear, the Court of Arbitration was authorized to render its decision in the absence of that party.

In the executive branch Congress, like the Council of the League, could only recommend to the states what armed forces each state should supply to the joint forces necessary to uphold the Union. The Confederation had no armed forces of its own. Like the League, it was an unarmed central organization trying to keep peace among armed states, and the futility of this arrangement speedily became apparent to the statesmen of that period.

### *The Consequences of the League's Weaknesses in its Three Primary Functions*

Several important consequences of the League's weaknesses in its three primary functions have become evident to all friends of the organization through the experiences of its first decade in opera-

tion. The lack of any power in its legislative department or Assembly to raise any revenue for its financing places the general organization entirely at the mercy of its member states, and reduces the League authorities to the necessity of asking the means of controlling the member states from the very states whose international relations are to be controlled by the League. As long as this impotence of the central organization continues, the states will control the League, but the League can never control its member states. In America it was found necessary to empower the legislature to raise revenues for the support of the central organization without the intervention of the states, before that organization could achieve any real power to control interstate relations and to maintain peace among its member states.

The lack of power in the Assembly to control commerce between the member states renders futile all the efforts of the League to establish friendly commercial relations among its members. As long as each member may of its own volition impose tariff charges against the trade of other members, may prohibit imports or exports as it will, may place whatever restrictions it chooses upon travel and investment across its boundaries, may discriminate as it chooses against the other members in allowing the use of its harbors; just so long there will be friction, retaliatory measures, economic warfare, ill will and the possibility of actual war among the states members of the League. This was the

experience of the states in America under their first form of organization, and it was found that the only method by which these causes of economic friction and possible warfare between the states could be abolished consisted in conferring upon the legislative branch of the general organization full power to regulate commerce among the states, and to prohibit all discriminations by one state against the traders of another state.

A third consequence of the weakness of the legislative function of the League may be noted in the attempts of the League's adjunct, the International Labor Organization, to establish minimum standards of humanity in the treatment of workers among all the member states. The necessity of unanimous ratification by the governments of all the member states has rendered futile practically all its efforts in this direction for the whole decade of its existence. Scarcely any of the draft conventions of the International Labor Organization have received the unanimous ratification necessary to bring them into universal operation.

One consequence of the weakness of the executive department of the League—the Council—has shown itself in the futile attempts that have been made ever since the League was organized, to arrive at a satisfactory formula for the application of the blockade sanction mentioned in Article 16 of the Covenant. The League, having no general forces under its immediate control, is compelled to recommend to the member states what proportion

of armed forces each should contribute "to protect the covenants of the League". In order even to form a recommendation, the members of the Council must unanimously agree that a situation calling for the application of the economic blockade exists; they must further unanimously agree which member states should be recommended to send forces; they must also unanimously agree upon the relative amount of forces to be asked of each of these member states. Even if all this unanimous action should prove possible, still any or all of the member states may neglect to take any action upon the recommendation made.

This is the system of armed support for the general organization that existed under the Articles of Confederation in America and that speedily proved unworkable in the Revolutionary War. Hence the statesmen framing the present Constitution of the United States found it necessary to confer upon the central organization the power to raise, equip, control and pay directly the necessary armed forces to preserve the Union, without intervention of the states and without any requisitions made to the states or to the state governments. The utter impotence of an unarmed central organization to keep the peace among heavily armed member states was clear to the statesmen in the convention of 1787, and they therefore provided for the adequate arming of the central authority and for the disarmament of the states members of the Union.

This brings us to another evident consequence of the weakness of the League executive. For ten years the League has been making futile efforts to disarm the member states and has accomplished nothing. The fundamental reason for this is, that the member states are aware that it is not safe for them to disarm, unless and until the general organization is adequately armed to give them full security against aggression from without the League or from any other member or members of the League.

In the United States, under their second form of organization, it has been possible to disarm the member states. The Constitution provides (Art. I, Sec. 9) that "no state shall keep troops or ships of war in time of peace". It also provides (Art. IV, Sec. 4) that the United States "shall protect each of them (the states) against invasion". And the assurance that this protection against invasion can and will be given consists in the federal army and the federal navy, controlled by the general organization and ever ready to afford that protection. This is the security of the states against any attack by an outside state or by any of the states of the Union that makes it possible for them to forego any individual army or navy.

A similar strengthening of the League's executive department is necessary, before the member states will feel safe to disarm; and until they do disarm, the possession of heavy armament by each state will be a constant source of suspicion and

rivalry among them, and will be a constant temptation to military leaders to use that armament in war.

*Method of Attempting the Improvement of the League Structure*

Assuming that the reader is now convinced of the need for improving the structure of the League of Nations, in order to make it adequate to the task of keeping the peace among the states of the world, and to the task of promoting the general welfare of all the states; the question will naturally be asked: How can this be done without endangering all that has already been accomplished?

Moved by the deep despair and terror caused by the World War, the states were indeed induced to accept the Covenant of the League, particularly because it was so inextricably intertwined with the peace treaty that they were practically obliged to accept the Covenant in order to obtain a peace treaty; but can any one suppose that, in a period of profound peace throughout the world, ten years after the World War has passed into history, and without the compulsion which the intermingling of the Covenant with the peace treaty afforded, fifty odd nations can be brought to a unanimous agreement on a whole series of amendments fundamentally changing the structure of the League of Nations? Would there not be grave danger that, in the prolonged controversies regarding the amendment of the Covenant, so many disagree-

ments would arise among the member states that the present Covenant itself might be lost and the whole League dissolved?

A situation precisely similar confronted the thirteen states of America united under the Articles of Confederation, when the need of strengthening and perfecting the general organization was felt. And since the best method of showing how a thing can be done is by showing how it has been done, a brief outline of the method by which the present form of organization of the American states was achieved, without endangering the first "league of Friendship" which bound the states to one another, may serve to throw some light upon the method by which the League may solve the problem when the proper time comes.

The first thing that the American statesmen in 1787 perceived was, that the thoroughgoing revision which was necessary could not be expected of the impotent Congress existing under the Articles of Confederation; and they therefore asked the Congress only to request the separate states to send representatives to an entirely independent convention, assembled for the sole purpose of effecting the necessary changes. To this constitutional convention the various states sent two or three of their ablest statesmen, men who were beyond the stage of talking for home consumption or of acting with a view to their own personal political fortunes. Elder statesmen were sent of the type of Benjamin Franklin, the aged philosopher of Penn-

sylvania; Washington of Virginia, the devoted leader of the revolutionary forces; and Hamilton of New York, with his keen sense of the practical and the realizable; men of the type represented to-day by Balfour of Britain, Briand of France, Hindenburg of Germany, or Root of America.

This method of making the necessary improvements in the central organization the subject of discussion by a convention entirely distinct from the Congress acting under the existing Articles of Confederation obviated the danger of "falling between two stools"; that is, of failing to secure the adoption of a more perfect form of organization, while at the same time endangering or wrecking the existing form of organization. Under the method of the constitutional convention in America the Articles of Confederation continued in force and were administered without interruption by the Congress during the period that the improvements were under discussion by the convention, and also until the results of the convention's labors had been ratified by the people of the member states. Then the new form was smoothly substituted for the old. The tenant continued to occupy the old house while the new one was being built, and upon its completion simply moved over into it. America did not adopt the method of the Russian revolution, which first destroyed the existing form of organization and afterward began to frame an improved form.

Another policy of the constitutional convention

in America was of great value in securing the adoption of the present more perfect form of general organization. It was early seen by the statesmen assembled in Philadelphia that, if all of their discussions were spread among the people of the various states, if the various concessions necessary to harmonize the interests of the states were broadcast, if all the inevitable differences in viewpoint among the delegates and the warm arguments necessary to reconcile these views were made the subjects of discussion throughout the states; the publicity would cause so much heat and passion everywhere, that the final result of the convention's labors would not be ratified by the people. Furthermore, the delegates would not feel free to speak their inmost thoughts and to voice their inmost fears and hopes, if the report of the daily proceedings of the convention were to go verbatim throughout the length and breath of the various states. These statesmen felt that it was the best policy, as we say in modern parlance, to "wash their linen in private", to "iron out their differences" among themselves, and to present only the clean finished article to the people of the states for ratification.

Whether or not these methods would succeed, should the attempt be made to develop the League of Nations into the United States of the World, there is no doubt that they did succeed when the attempt was made in 1787 to develop the "league of friendship" into the United States of America.

*Improvements Needed in the League's Legislative Branch*

When the American statesmen met in the constitutional convention in 1787, the first subject that engaged their attention was the establishment of a fair basis of representation in the general organization. Like the League at present, each state had one vote. The larger and more populous states rightly complained that such a system was not fair to them, and they refused to give the central organization any real power until a more satisfactory basis of representation should be provided. As a matter of fact, of course, the voices of the larger and more populous states carried more weight in the deliberations of the Congress than those of the smaller and less populous states, just as in the League at present the voice of England, France or Germany carries more weight than the voice of Siam or of Denmark. In each case the voice, although equal, was "weighted" by the conception of the size and importance of the state whose representative was speaking. But the statesmen representing the larger states at Philadelphia insisted that their greater population should rightly, legally and definitely possess a voting power in proportion.

The smaller states were opposed to any change for fear that their influence in the general organization would be reduced to a cipher, and that their interests would be overridden by the preponderating voting power of the populous states. As one delegate put it: although an equal vote for all

states was not *just* to the larger states, a vote proportional to population was not *safe* for the smaller states. The compromise by which these conflicting views were reconciled is known to the world and has been since adopted in the political organization of many states. Two houses were provided, in one of which representation is equal for all the member states and in the other of which representation is proportional to population for each state; the affirmative vote of each house separately being required to pass laws. This method provides the reconciliation necessary in the League between the intense nationalism existing among its member states, which insists upon an equal weight *for each state* in the general councils, and the individualism existing in the large states, which insists upon an equal weight in the general councils *for each citizen.*

The convention at Philadelphia thoroughly discussed the idea of taking into account in the representation of each state the commercial importance or the total wealth of that state. One proposal was made to allow representation in accordance with the revenue which each state supplied to the general treasury; and another, to allow representation in accordance with the total value of all the land in each state. Both these methods were considered so unstable, so rapidly changing, and so difficult of satisfactory determination, that they were rejected as unsound; and the simple rule prevailed that every individual, whether rich or poor, whether an inhabitant of a commercially important or un-

important state, should be considered equal before the law and in determining representation. The same antiquated property qualifications, etc., are now sometimes brought forward, when a fairer method of representation of the member states in the Assembly of the League is considered.

### *Actual Power to Act Needed Within a Well-Defined Sphere*

Having determined a satisfactory method of representation in the general organization, the next object of the statesmen in Philadelphia was, to give Congress actual and full authority to legislate within a carefully defined field in which action by the states individually could not be effective. In this field where general action was necessary the former requirement of practical unanimity was changed, so that a majority in each house could arrive at a final decision. The convention carefully laid down the limits of the sphere in which authority to legislate was granted to the central organization, and it was clearly stipulated that all powers not specifically granted by the states to the central organization were retained to the states and to the people.

What powers it would be advisable for the states members of the League to confer on the Assembly of the League would doubtless be the subject of much discussion, as it was in the American Union; but with a reasonable amount of good-will it would not be impossible to define the field in which general

action alone is adequate and in which local action by the member states is incompetent; such as the general and commercial relations between states, sanitary and quarantine regulations, boundary questions, interstate waterways, etc.

One power conferred by the constitutional convention upon the general Congress must be specifically noticed. It is the power of direct taxation for the support of the general organization, without dependence upon or intervention of the member states. This facility was necessary to give the central organization the necessary independence, dignity and power to control the states in their relations to one another and to compel the states to keep the peace among themselves.

### *A Court With Compulsory Jurisdiction in Inter-State Cases*

In the establishment of the Permanent Court of International Justice the League of Nations, as has been stated, has made further progress toward a federation of the states of the world than did the "league of friendship" in the American States. Under the Articles of Confederation the latter established a cumbrous and unsatisfactory method for choosing arbitrators for each specific dispute, these arbitrators being chosen by the contestants to act as advocates and partisans of their own contention, and not as unbiassed, impartial and able jurists, who would decide the case according to law and equity. The League has established a real

court, whereas the American "league of friendship" established merely a method for providing a temporary board of arbitrators meant to settle the controversy by conciliation and bargaining, with an eye more to the relative power and position of the contestants than to the justice of their contention.

Compared with the court established under the second form of organization in America, however, the Permanent Court of International Justice is but a feeble embryo. It lacks the authority to take jurisdiction in interstate cases. It cannot entertain a complaint from an aggrieved state, unless the state accused is willing to have the case tried. It cannot cite a state to appear before it, nor can it render in the absence of a state a decision against it. It has no written and accepted code of laws which it can apply in its decisions. It has no power to enforce its decisions other than the power of public opinion.

How were these weaknesses eliminated in the case of the Supreme Court of the United States? In the first place, a basis of definite and properly enacted law was provided, by the clear and specific enumeration of the functions and powers of the general organization in a written document ratified by the people of each state; and also by the establishment of an assembly or Congress with the power to legislate with final authority in the field of legislation confided to the general organization. The powers of the Constitution and the federal laws have given the American Supreme Court a

definite code of laws upon which to base its decisions.

In the second place, the people of each state have, in ratifying the Constitution, granted the Supreme Court original and undisputed jurisdiction in all interstate matters, as laid down in the Constitution and the laws enacted in accordance with it. The states have all agreed in advance to submit to the Court all interstate controversies "of whatever nature or of whatever origin they may be".

They cannot refuse to appear when a proper case is brought before the Court, without repudiating their acceptance of the Constitution. For this reason the Supreme Court can cite the various states or the citizens of the various states to appear before it; its subpœna runs throughout the states without the intervention of any state government officials; it requires no extradition processes anywhere for its officers to apprehend an offender against the federal laws.

In the third place, an adequate executive power was provided for the general organization, and this power is at the disposal of the Supreme Court for the enforcement of its decisions. The power of the United States marshals in enforcing a decree of the Supreme Court, like its jurisdiction, runs throughout the states without any application to or intervention of state or local officers. The general forces of the whole federation are available, if necessary, to enforce peaceful submission to the decisions of the Court.

The three things, then, which the Permanent Court of International Justice lacks, and which the Supreme Court of the United States possesses, are an adequate code of interstate laws, a compulsory jurisdiction in interstate cases, and an adequate interstate force for carrying out its decisions.

*A World Police, Naval, Land and Air*

The executive Council of the League, like the executive under the first form of organization in America, has no armed forces of its own with which to enforce international law as applied by the Permanent Court of International Justice. Like the American executive at that time, the Council has only the power to request the member states to supply forces, when necessary, "to protect the covenants of the League". The forces of one or several states are to be called upon to coerce one or several of the other states members of the League. Hamilton, in the constitutional convention of 1787, discussed this method in vigorous language. "Can we believe", he said, "that one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream, it is impossible". If it should be attempted, Hamilton was of the opinion that "it would amount to a war between the parties".

The framers of the American Constitution saw clearly that the entire conception of a central executive authority must be changed from that prevailing under the Articles of Confederation, and

which now prevails under the Covenant of the League of Nations. Instead of a requisition for the forces of member states, which would act as representatives of their particular states and would act upon states as political units, they saw that it was necessary, first, to have a central force under the authority of the general organization, impartial and not representative of any particular state; and, secondly, that the general laws and their execution must operate, not upon states as political units but upon individuals, so that the central forces would not be required to coerce a state or states as political units (which is the definition of war), but need be used only to restrain a criminal individual or group, or to enforce the legal restraints of the general organization against an individual state officer who should violate the general laws.

The framers of the Constitution were also aware that it would be impossible for an unarmed central organization to keep the peace among a large number of heavily armed states. They arranged, therefore, for an armament on sea and land under the control of the central organization adequate for the protection of each one of the states from invasion or aggression by another state; and after giving an unqualified assurance in the Constitution that the United States "shall protect each of them against invasion", they required (Art. I, Sec. 9) that "no state shall without the consent of Congress . . . keep troops or ships of war in time of peace".

The disarmament of the states has been effectively carried out, because the assurance of protection by the central organization is backed up by an adequate navy and army of the United States. To an American it seems that the same general lines must be followed by the League, if it would arrive at any real disarmament of the member states and "the enforcement of international obligations by common action". The states members of the League cannot safely disarm until the League absolutely guarantees their protection against invasion or aggression, and that absolute guaranty must be backed by an adequate world police force on sea and land and in the air.

*The Value of the League's Co-operative Work*

Many sincere friends of the League doubtless have the feeling that, in the prominence which the League in actual operation has given to the co-operative features of its work, as compared with the governmental or political phases, it has neglected the principal purpose of its existence and has busied itself unduly with minor and comparatively unimportant details. It must be borne in mind, however, that while a union of states like the United States of America or the Russian Union can be held together by pressure from without, as well as by attraction from within; an organization embracing all states, a United States of the World, should the League eventually become so all-embracing, could not be held together by outside

pressure, because there would be no states outside to exert that pressure. The League, therefore, much more than the United States of America, must rely upon the benefits which it confers upon its member states, in order to hold their loyalty. It must be held together entirely by the cohesive power of internal attraction. For this reason the co-operative work of the League is of the highest importance for its prestige and its permanence.

The world-wide health work, sanitation, protection of weak peoples through mandates, suppression of slavery, efforts toward emergency relief, etc., are by no means to be considered trivial or unimportant, because they are not the main purpose of the League. The League of Nations may well go further in its co-operative work, as the United States has done, and establish a customs union throughout its territories, with absolute freedom of exchange among its members. The universality of the League, and the absence of outside pressure to hold it together, may ultimately even lead it into activities now considered paternalistic or even socialistic.

# CHAPTER X

## THE PROPOSAL OF FIVE POLITICAL CONTINENTS

The great desideratum in government is such a modification of sovereignty as will render it sufficiently neutral between the different interests and factions, to control one part of the society from invading the rights of another. . . . As a limited monarchy tempers the evils of an absolute one; so an extensive republic ameliorates the administration of a small republic.—JAMES MADISON

Many European statesmen who have studied the benefits of federation in America have come to the conclusion that it would be a very good thing, both for the preservation of peace and for the general benefits resulting, if the states of that continent were similarly united in a federation as the United States of Europe. Opinion is divided as to whether this European federation should exist within the framework of the League of Nations, or whether it should take the place of the League. It is generally conceded that the actual work of the League during its first decade of existence has been principally concerned with the states of Europe and with their dependencies, although in one recent instance the influence of the League has been potent in preventing war between two of its South American members.

Those who advocate a federation of European states, whether within the structure of the League or as a substitute for the League, are immediately confronted by two serious difficulties. Russia is half European, half Asiatic. The British Empire is partly European, partly universal. Shall the United States of Europe include one or both of these states? If Russia were excluded, the result would be merely a federation of Western Europe. If Great Britain were excluded, it could hardly claim to be even that, for Great Britain is doubtless one of the most important countries of Europe. If one or both of these great states were included, the result would be far more than a European federation.

### *The Coudenhove-Kalergi Plan of Five Political Continents*

After duly weighing these difficulties, Count Richard N. Coudenhove-Kalergi has evolved a plan for five subsidiary or regional Leagues of Nations, to be affiliated under a general world league. He divides the world into what he calls five political continents,—Pan-Europe, Pan-America, the British Empire, the Russian Federation, and the Far East. The nations in these groups, with the possible exception of the Far East, have, he says, already achieved a certain degree of unity among themselves. The Russian Union has fully united the peoples embraced in its territory into a single federation. The states of the British Empire are

united in a measure by their common allegiance to the Crown. The states of North and South America are loosely united by the Pan-American Union. The nations of Western Europe are closely akin, have many interests in common, and should be united under a single general political organization. And the states of the Far East, Japan and China, are racially akin, have many interests in common, and would profit by a union.

His proposal is, that the states in each of these groups should form a federal union among themselves, like the United States of America, the Australian Federation, the Swiss Federation, and others. After this has been accomplished, he would have these five federations or political continents unite in one general world federation. The advantages which he feels would result from regional federations under the general federation are principally, that matters relating solely to one continent would be handled only by that federation, and that only affairs of world import would be handled by the world federation. He feels that, as local autonomy is carefully preserved in the present federations of states, so continental autonomy should be carefully preserved in a world federation.

### *Criticism of the Coudenhove-Kalergi Plan*

There are a number of considerations, however, which indicate that it would be far more difficult to unite the states in any one of the five groups or

political continents into a single federation by themselves than it would be to unite all the states of the world into one general federation. In the first place, neighboring states would be extremely reluctant to have a decision affecting them made solely by a nearby group of states, who would not be disinterested and impartial in their decision, since their proximity would usually involve their own interests more or less. States would be less unwilling to have the question decided in a world-wide congress of states, the great majority of which had no immediate interest in the matter, and which would therefore be inclined to decide justly and impartially.

To make this point clear, take a concrete instance. Suppose there were a question of the just regulation of navigation on the Danube. Would not the states of Europe feel that consideration of the matter in a congress composed only of European states would be far more likely to be prejudiced and selfish than would be the case in a congress composed of all the states of the whole world, in which the majority of states would have no other interest in the particular question than to see justice established and peace and harmony maintained? The probability that just decisions will be reached by a group of states is increased as the number of states and the extent of their area are increased; the wider the group of states, the more likelihood that in every question which may

arise the majority of states would have no immediate, selfish interest, and would have only the vital interest to see that justice is establish and peace maintained throughout the world.

The jealousies of the states of Europe among themselves have been so clearly shown in the history of the past six or seven centuries, that it is unnecessary to dwell upon them. It would be more difficult to unite them in a United States of Europe than it would be to induce them to join a general federation of all the states of the world. In a great world body they would feel that it would be impossible to obtain the consent of a majority of the states to act unfairly against their interests.

Among the states of the Americas, also, the same jealousies exist. Especially are the Latin-American states jealous of the preponderating power and influence of the United States. If it were suggested that the loose association called the Pan-American Union should be developed into an actual federation, the Latin-American states would rightly fear that the United States, having a population about as large as all the other states together, would dominate the whole hemisphere and would make all regulations in its own interest; whereas, if they and the United States were gathered in a great world congress, not only would such a dominating position of the United States be impossible, but the great majority of the states of the world, having no immediate, selfish interest in questions af-

fecting American states, would have only the fundamental interest to see that justice should be established, in order that the peace of the world should not be broken. The position of the United States in a Pan-American federation would be similar to the troublesome position of Prussia in the German Federation, where the preponderant size and population of that state cause constant friction with the smaller states, which in the years following the World War nearly broke the federation.

In the British Commonwealth of Nations a difficulty of another kind would arise, should the attempt be made to develop the Empire into a federation. The population of India is far greater than that of all the other states together, and under a federal form she would absolutely rule that "political continent". It would be an Indian federation rather than a British federation. The English-speaking states of the Commonwealth would be far less willing to entrust their interests to a federation thus dominated than they would be to a federation of all the states of the world, where they would feel that the English-speaking nations would be properly represented, both in population and in number of states. Not only so, but they would feel that their interests would receive far more intelligent and sympathetic consideration in a congress including the nations of Europe, whose civilization is akin to their own.

Another difficulty would present itself in regard

to the British Empire. In any scheme of political continents, such as that here discussed, India logically belongs in the Far Eastern political continent. Even assuming, what is most unlikely, that for the sake of world peace the British Commonwealth of Nations would be willing to have India join the Far Eastern federation, we simply jump out of the frying pan into the fire. A Far Eastern political continent thus made up would contain a population as great as that of the four other "political continents" put together, and in a general world federation of the five subsidiary federations (such as the plan contemplates) the Far Eastern would absolutely dominate the whole. The possibility of forming a general world federation with this substructure is very remote, and even if it were formed, it would result in the same basic causes of friction that Germany has experienced because of the dominance of Prussia.

As to a Far Eastern "political continent", it may be remarked that, if India is excluded, as it doubtless would have to be, that federation would consist only of China, Japan and Siam. The population of China is four times that of the other two states, and she would rule absolutely, or would at least be in a position to block any action by the two smaller states. Japan and Siam would doubtless feel that their interests were far safer in a general congress of the world, where the vast majority of states might confidently be counted upon to be disinterested and impartial on questions affecting

the states of the Far East, while China would be apt to have a selfish view and interest in every decision on account of her proximity.

### *Dangers of the "Five-Continent" Plan*

Having pointed out the difficulties that would be met in an attempt to establish five continental federations united under one general world federation, it may be well to discuss certain dangers that inhere in the plan. The jealousies which now exist between separate nations would be enhanced and intensified in the group jealousies which would arise, when all the nations of similar culture and racial characteristics were united in a single federation. If the "yellow peril", for instance, even now looms before the demagogues of certain countries, what would be the effect, if all the Oriental countries were closely united in a federation? If the "white domination" even now seems a serious menace to the demagogues of other countries, what would be the effect, if the European states were united under a single federation?

These enhanced and intensified jealousies, obsessing whole "political continents", would lead to the danger of wars, not between countries but between whole continents. That this danger is not merely imaginary may be seen in the case of the single one of the five "political continents" which is now in a great measure united under a single federation.

The mutual suspicion and fear existing between the Russian Bolshevist "political continent" and the rest of the world is profound and real, and unless measures are taken in time to arrive at a common understanding and a *modus vivendi,* there may be grave danger of a war of continental proportions.

### *The Idea of Linguistic Families of Nations*

A less definite proposal than that of five political continents subsidiary to a general world federation is the idea of a grouping of nations first into linguistic families, and these groups finally joining in a general world federation. The natural linguistic groups would seem to be the English-speaking nations, the Latin nations, the Germanic, the Slavic, the Arabic-Semitic, and the Sino-Japanese. While there is, of course, a certain cultural affinity among peoples of similar languages, there is at present scarcely a vestige of political affinity, except in cases where the language is not merely akin, but is practically identical, as in Germany and Austria. Some of the keenest jealousies in the world are those existing between nations whose languages are akin, and the idea of approaching the problem of world peace through a world political substructure built upon linguistic units seems far less likely of realization than the plan of five political continents as the substructure of the world organization.

### *The Framework of a World Federation Already Exists in the League of Nations*

The general framework of a world federation now exists in the League of Nations, whereas the federal structure of the five "political continents", with the exception of Russia, would have to be created; and even after these subsidiary federations should have been created the general world federation uniting the five as distinct political entities would have to be created anew, since the present Covenant of the League contains no reference to groupings of states, but treats every self-governing state of the world as an actual or possible direct and co-equal member of the League.

All that is required to develop the present structure of the League into a federation is the strengthening of the three essential functions which now exist in the League in embryonic form. The development of the Assembly into an actual World Legislature, with proper representation and with adequate power to act within a carefully delimited field; the development of the Permanent Court of International Justice into a Supreme World Court, with a clear and written code of laws upon which to base its decisions, with compulsory jurisdiction between states, and with adequate power at its call to enforce its decrees; and the development of the Council of the League into a modern Executive Cabinet, controlling adequate finances and forces to execute the laws laid down by the Assembly, as interpreted by the Court,—these three

definite things could be far more easily achieved than the much more complicated procedure involved in trying to form five new federations of states embracing the countries of the world, and then trying to form a federal structure altogether anew, under which these five federations might join in one general world federation.

### *Fears and Jealousies Would be Removed by a Direct World Federation*

The development of the League of Nations into a single, direct world federation, as was urged in the preceding chapter, would remove the fear of friction and war between the so-called "political continents". The United States of Europe, for instance, would be in constant fear of war with the Union of Socialist Soviet Republics. The growing sea-power of Pan-America would cause a constant fear of war between that "political continent" and the British Empire. The Far Eastern "political continent" would be more in fear than it now is of the domination of Europe, should the states of that continent be joined in a United States of Europe. All these fears and jealousies would be avoided by the direct, individual affiliation of each country with the League of Nations strengthened and developed in the direction of an actual federation.

The states constituting the British Empire are so loosely united that they have become separate and independent members of the League of Nations. To an outside observer it would seem that

all of these states would benefit greatly by the strengthening of the League in the direction of federation. At present the members of the British Commonwealth outside the British Isles have (with a few exceptions) no envoys of their own; and their foreign policy is practically determined for them without their representation and consent. In a Federation of Nations they would have just and proper representation and a full voice in the decision of all international relations. As the newer states of the British Commonwealth grow to equal or even greater population and commercial importance than the mother country, they will grow more and more impatient with the apron-strings of allegiance to the Crown and of subordination in the determination of their foreign policies. This has already become evident in the case of Canada, who has sent her own representative to Washington, and in the recent weaning of the Irish Free State. Under a strong League of Nations this Commonwealth will still be united, but in the wider family of all nations.

The tariff barriers which are such a constant source of friction between separate countries at present would become even more exasperating, should they be applied by whole "political continents" (as is proposed even now for the British Empire), to exclude or hamper the trade of other "political continents". Under one general world federation, however, with absolute freedom of trade among all the members, such as exists

among the member states of the United States of America, not only would all such trade friction and irritation be abolished; but, if the League should establish a customs union, this action would have the two-fold effect of more closely uniting the states within the customs union and of affording a strong inducement to the states still outside to enter the general federation. In the United States the irresistible argument that induced Rhode Island to enter the Union was the fact that, if she did not enter, she would be outside the customs union established by the Constitution among the states of the Union.

### *Regional Interests Could be Protected Under a Direct World Federation*

Regarding the argument that subsidiary continental federations are necessary within the world federation, in order adequately to protect the regional interests of these "political continents", it may be answered that experience in existing political unions has shown that it is possible to protect the interests of separate regions within these unions. Thus, in the United States, the fleet is divided into an Atlantic and a Pacific fleet, in order to protect the two coasts. In the British Empire the fleet is divided into the home fleet and the Eastern fleet, in order to protect the mother country and the dominions. In a similar manner it would be possible to provide regional units of the world police, in order to protect adequately the regional or special inter-

ests of the various "political continents". And the protection afforded would be all the greater, for the reason that the regional world police could always draw reinforcements whenever necessary from the whole forces at the command of the World Federation.

# CHAPTER XI

## A COMPARISON OF LEAGUE METHODS WITH PAN-AMERICAN METHODS

Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cisatlantic affairs.

THOMAS JEFFERSON

The Pan-American Union is older than the League of Nations, having been in existence since the closing years of the nineteenth century. It was founded in 1890 as the "Commercial Bureau of the American Republics". In 1902 there were added to the original idea of commercial and economic co-operation the concepts of cultural, scientific, educational and sanitary co-operation, and the style of the organization was changed to "The International Bureau of the American Republics". Six or seven years later a somewhat hesitating and tentative approach was made toward the inclusion of the legal and political relations of the member states; and the style was again changed to the present form, "The Pan-American Union", or "The Union of American Republics". The function of preserving permanent peace among the countries

of the Western Hemisphere was a still later development of the Pan-American Union, which took definite form at the Havana conference and was in 1928 at the Washington conference put into the form of general treaties of conciliation and arbitration among the member states.

*Similarities Between the Two Organizations*

While there are a number of points of similarity between the organization and the methods of the League of Nations and those of the Pan-American Union, there are certain vital differences in the two organizations which it is important that the friends of the League should clearly understand, lest they be lulled into a false assurance of permanent world peace in reliance upon the effectiveness of the Pan-American organization.

Both organizations are loose associations of states for the purpose of co-operation in regard to their general welfare and for the purpose of conciliation of their differences and the preservation of harmony and peace among their member states. Both organizations act through periodical conferences in which each state, regardless of size or importance, has an equal vote. Both organizations take decisions only through a unanimous vote, a single negative serving to block all action. Then, after a unanimous decision has been reached, both organizations require the unanimous ratification of the governments of all the member states before the decision reached becomes effective and binding.

### *Differences Between the League and the Pan-American Union*

At first glance, however, the League of Nations would appear to be the more potent agency for the preservation of international peace. In the first place, it is based upon a definite, written Covenant or constitution, which clearly defines the structure and functions of its various organs, while the Pan-American Union rests upon no such clear and firm foundation. In the second place, a regular annual meeting of the member states in conference is prescribed, and provision is also made for an interim committee to carry on the work of the League between meetings of the Assembly; while the Pan-American Union has no stated times of meeting and has no body to carry on its work of pacification continuously between meetings of the member states. In the third place, the League of Nations possesses (only in rudimentary form, it is true) the three functions which experience with responsible government has everywhere demonstrated to be necessary for the effective establishment of justice and the preservation of peace; namely, the legislative function in the Assembly, the judicial function in its affiliated Permanent Court of International Justice, and the executive function in the Council. The Pan-American Union has no permanent court; it has no executive council; it possesses only the first function in the periodical conferences of the member states.

A fourth difference between the two organizations which must be noted is, that the League Covenant makes provision for sanctions against a state which violates its obligations, while the Pan-American Union has no such provision in its organization.

### *The Pan-American Union the Stronger Agency for Peace*

After this admission of the more advanced structure of the League, as compared with that of the Pan-American Union, the assertion may seem strange that the latter is the stronger agency for the maintenance of peace among its member states. The apparent paradox, however, is a fact, and it is the result of one further and vitally important difference between the League of Nations and the Pan-American Union. The League is a union of states of which the principal ones are fairly equal in population and strength. The Pan-American Union contains one state with a population and strength greater than those of all the other member states put together. The United States absolutely dominates the Pan-American Union. This fact constitutes at once the greater strength of the Union as compared with the League and its greater weakness. The foreign policy of the United States is law in the Western Hemisphere. When the United States chooses to throw its full weight behind a decision, that decision cannot be challenged

or thwarted in the Western Hemisphere. This situation makes for the effectiveness of the Pan-American Union as a keeper of the peace in the New World, and provides a sanction of irresistible force and immediate availability for the decisions of the Union.

But the dominance of the United States is also the greatest element of weakness in the Pan-American Union. It is but natural that the member states whose destinies are in the palm of the hand of one member should be extremely jealous of that member, and as they grow in population and power should resent the intervention of that member in their affairs. A "pax Romana" remains a general peace only so long as the great state holds its supremacy in population and power. It is a peace ultimately based on force, not on justice.

### *The Monroe Doctrine and its Development*

In plain English, the peace of the Western Hemisphere rests on the Monroe Doctrine and its later development, far more than it does upon the Pan-American Union. The friends of the League of Nations must be careful, therefore, not to conclude that, because an institution similar in structure to that of the League has existed in the New World for some decades and peace has been maintained unbroken between the states of the New World during these same decades, it has been the

Pan-American Union which has maintained that peace.

In order to obtain a clearer understanding of the manner in which the Monroe Doctrine and its additions have kept the peace in the Americas, and of the impossibility of applying the same kind of a "regional understanding for securing the maintenance of peace" (as the Covenant describes the doctrine) in the League of Nations, it is advisable briefly to review the history and the development of this foreign policy of the United States.

As originally laid down by President Monroe in 1823, the Monroe Doctrine merely gave notice to the countries of Europe, that any further colonization by them in the Americas or any attempt by them forcibly to re-establish monarchical government in any of the states of the Western Hemisphere would be regarded by the United States as an unfriendly act directed against this country's safety. Before the administration of Monroe, however, Thomas Jefferson had stated the policy in a form which showed more clearly what was the intention of the American people and which explains the later development of the doctrine. "Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cisatlantic affairs." This second maxim contains in a nutshell the entire foreign policy of the United States now embraced in the conception of the Monroe Doctrine.

*Logical Consequences of the Monroe Doctrine*

The jealous watchfulness of the United States against any possible opportunity by which European states might obtain a further foothold in the Western Hemisphere gradually led to opposition by this country to any armed intervention of the forces of overseas nations in American affairs. In order to justify the demand for such abstention of European nations, the United States was logically compelled herself to see that the lives and property of European citizens, as well as those of her own citizens, were protected in the countries of the Western Hemisphere. This policy in turn logically necessitated intervention by the United States in cases where weak governments could not guarantee the safety of persons or property. Thus, in the recent unsettled condition of Nicaragua, the United States acted not only to protect the lives and property of her own citizens, but at the request of the British and the Italian governments, in order to protect the interests of their nationals as well. This the American government felt itself bound to do, since it insisted that these governments should not send their own armed forces to that country for the purpose.

In order to minimize the need for such armed intervention, the next logical development was a declaration of American policy of opposition to the forcible overthrow of a properly elected government in any American country, thus discouraging

the revolutionary warfare that had for many years endangered life and property. And, as in the recent revolt in Mexico, the United States has now adopted the effective sanction, in order to enforce the foregoing policy, of giving financial and military aid to the properly elected government and of forbidding its citizens to furnish money or arms to a revolting faction.

### *America the Policeman of the Western Hemisphere*

The logical development of the Monroe Doctrine, therefore, has made the United States the policeman of the Western Hemisphere. If we insist that European countries shall not intervene with armed forces in this hemisphere, it follows logically that we must protect their citizens and their interests. In order to do this most effectively, we must forbid the international wars and the civil wars throughout the two continents which would endanger the persons and property of Europeans, as well as those of our own citizens. The United States is rapidly taking the position, that warfare or armed revolt anywhere in this hemisphere is an intolerable nuisance and must not be allowed. The United States can enforce this peace policy, first, because as previously stated her population and power are greater than that of all the other countries put together; and secondly, because the United States has frequently and clearly declared (most recently through President Wilson) that she will never seek

or annex another square foot of territory in this hemisphere, and that she desires only the peace and prosperity of all the American countries.

*No Parallel in the League of Nations*

It is evident that there is no parallel to this situation among the members of the League of Nations. The nearest thing to it is the position of Great Britain. While the British Empire contains a population that could possibly be placed over against the population of the remaining states of the League, this population is far from being homogeneous or available for such a purpose as policing the whole League. And there would be far more jealousy and suspicion of the motives of Great Britain, if she should attempt to police the League, than there is of the growing American policy of policing the Western Hemisphere.

And it is better that there should be no parallel to the American situation in the League. The jealousy of American intervention throughout the Western Hemisphere will probably continue to grow stronger as time passes; and the present situation, while in a measure guaranteeing the peace of the hemisphere, is a temporary and unstable condition and not one upon which a sure foundation of permanent world peace can be built.

# CHAPTER XII

## WHAT SHOULD AMERICA DO WITH THE LEAGUE?

If a body of international law is established, I would give the court compulsory jurisdiction. . . . I would give it the same power that the Supreme Court of the United States has in controversies between states. That is the only system which will give the smaller nations any hearing, when they are in controversy with large nations.—UNITED STATES SENATOR WILLIAM E. BORAH. (Quoted in *The Road to Peace,* by Bernstein.)

Why ask this question? America *has done* with the League. The United States will have none of it. We have definitely and finally rejected the League,—lock, stock and barrel. For a number of years after the organization of the League the American State Department simply refused to acknowledge its existence: communications of various kinds addressed to the United States government by the Secretariat of the League did not receive even the courtesy of an acknowledgment.

### *America's Refusal to Enter the League*

When we come to analyze the reasons for American rejection of the League, we find that they were threefold. First, a bitter personal antagonism be-

tween President Wilson and certain leaders of the United States Senate. Second, refusal to accept certain provisions of the Treaty of Peace, of which the League Covenant was an integral and inseparable part. Third, opposition to the structure and functions of the League itself.

Regarding the first of these causes of the rejection of the League by the United States, it may be well briefly to recall that, when President Wilson went to the Paris Peace Conference as the head of the American delegation, he selected no member of the Senate for the delegation, although according to the Constitution of this country the Senate is co-ordinate with the President in the treaty-making power, and no treaty can be ratified without the consent of two thirds of the senators. Furthermore, the President selected four Democrats for the peace delegation and only one member of the Republican Party, and this single Republican could hardly be considered a strong or leading member of the Party. He was an inconspicuous, retired diplomat. By this course President Wilson roused rather bitter antagonism in the Senate and keen resentment in the whole Republican Party, who felt that the important treaty to be negotiated was a national and not a party matter.

When the President was made aware of this double resentment, instead of using conciliatory tactics, he added fuel to the flames by asserting that, when he returned from Paris with the treaty, the senators would find that the Covenant of the

League of Nations was so closely and inextricably interwoven with the Treaty of Peace, that they would be compelled to ratify the Covenant in order to obtain a peace treaty with Germany. This threat caused a "round robin" to be circulated among the senators, which was signed by enough senators to prevent any ratification, informing the President that, unless the views of the Senate were given proper consideration, ratification would be refused.

The President was obdurate (except for the addition in the Covenant of a provision safeguarding the Monroe Doctrine) and undertook to force the hands of the Senate by a direct appeal to the American people in a series of speeches throughout the country. As is well known, in the midst of this mobilization of public opinion President Wilson broke down physically; the Senate refused its consent not only to the Covenant of the League of Nations but to the entire Treaty of Peace, unless certain reservations should be accepted. These reservations were rejected by the President, and the Senate in turn rejected the whole treaty, necessitating the negotiation of a separate treaty of peace with Germany by this country.

President Wilson has now passed away. Senator Lodge, his chief antagonist, has passed away. The Republican Party has apparently forgotten the insult offered to it. It may therefore be fairly said, that the first cause of the rejection of the League Covenant has now disappeared.

### *Opposition to the Treaty of Peace Involved Opposition to the Covenant*

As was truly said by President Wilson, the Covenant of the League of Nations was so inextricably interwoven with the Peace Treaty that the latter could not be accepted without the acceptance of the former. Not only was the Covenant of the League an integral part of all the peace treaties, but there were throughout the treaties references of various matters to the custody or the decisions of the League organs. The entire question of the disposition of German colonies and their administration was tied up with the League. The International Labor Organization provided for in Article 13 of the Treaty with Germany was made practically an affiliation of the League and an integral part of it. The Permanent Court of International Justice provided for by the Covenant was given jurisdiction in numerous questions of interpretation of the treaties of peace.

The United States Senate found that it could not separate the Covenant of the League of Nations from the Peace Treaty. There was, however, profound opposition in the Senate to certain provisions of the Treaty; in fact, it is an open question whether the opposition to these treaty provisions was not even stronger and more uncompromising than the opposition to the League Covenant. It would serve no purpose and would only revive departed bitterness to dwell upon these features

of the Peace Treaty. A careful reading of the Senate debates upon the Treaty and the League will fully support the statement, that the opposition of the United States Senate to these provisions of the Treaty was a very potent cause of the rejection not only of the Covenant, but of the whole Treaty.

Since that time America has made a separate treaty of peace with Germany. The Covenant of the League of Nations is no longer tied up (as far as America is concerned) with extraneous and irrelevant matters. It is therefore fair to assert that this second cause of the rejection of the League by the United States is no longer operative in this country. The League can now be considered on its own merits, free from any connection with outside questions.

### *Opposition to the Structure and the Functions of the League*

There remains, therefore, only the third of the causes which led to the refusal of America to enter the League of Nations in 1920. After a decade of experience with the League in actual operation this opposition remains unaltered. It has been the main purpose of this book to throw the light of history upon the American viewpoint, as impressed upon us by our own early experience, that a mere alliance of executive governments is inadequate as a machinery for establishing justice and peace among states, inadequate as a method of disarm-

ing states in reliance upon the common protection of the general organization, inadequate for the promotion of the general welfare of member states.

When Lord Robert Cecil, than whom no man has been more devoted to the League of Nations, visited the United States several years ago, he wrote the author to the effect that he could not see how states could have any relations with one another except through their foreign offices. He evidently could not comprehend any general organization of states except one in the manner of the British Commonwealth of Nations. It seemed hopeless to suggest that he study the relations of these forty-eight great states of America to one another through the Congress and the Supreme Court of the United States.

### *America's Present Relations With the League of Nations*

The activities of the League of Nations during the first decade of its existence may be broadly classed under two heads, the co-operative and the coercive, or the humanitarian and the political. While the United States has during the decade scrupulously refrained from any connection with the political or coercive activities of the League, we have for some years departed from our refusal to recognize the League in our foreign relations, and toward the humanitarian or co-operative activities of the League we have shown a growing sympathy and a desire to do our part.

We began by sending unofficial observers to conferences of this nature and have gradually increased our participation to the point of presenting our views fully and of having our representatives take part with almost the same degree of authority as that possessed by representatives of member states of the League. When it is recalled that the acts of League representatives always require the ratification of their governments, even after a unanimous decision has been reached, the position of the United States in regard to the co-operative or humanitarian activities of the League more and more approximates that of the member states themselves.

In such efforts as the suppression of the narcotic trade, the suppression of the white slave trade, the control of epidemics, the financial rehabilitation of embarrassed states, the re-establishment of sound currencies, the adjustment of reparations, etc., America has co-operated fully and loyally with the states members of the League for the good of the whole world.

*The Leagued and Associated States*

But here our co-operation has stopped. In regard to all the measures contained in the Covenant for the maintenance of peace among the nations of the world and for the peaceful settlement of differences between them either through arbitration, adjudication or conciliation, we have held strictly aloof. We have feared that any co-operation with

the League in this, the principal purpose of its existence, might involve us in alliances entangling us in the quarrels and the wars of European states.

Recently, however, an event has occurred which should profoundly alter our attitude toward the League's efforts to keep the peace of the world. At the instance of the American Secretary of State, Mr. Kellogg, the generous suggestion of Foreign Minister Briand of France, that these two countries should forever renounce war as a method of settling differences between them, has been widened to include all the principal countries of the world, and up to the present time sixty-two states have signed or signified their intention to sign a solemn general treaty by which they bind themselves "that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means".

It is true that the signers of this Peace Pact have not agreed to take any action whatever against a nation violating the treaty and seeking the solution of an international difference by war; but it is natural that all the signatories, and especially America, which had such a large part in negotiating the agreement, should frown upon bad faith and should seek to discourage a war-making nation.

The United States, in particular, is in a position to do this very effectively without involving the country in any military alliances or any military

measures whatever. It is a well-known fact, that the chief obstacle in the way of the application of the economic sanction mentioned in Article 16 of the League Covenant is the uncertainty on the part of the members of the League, and in particular of Great Britain, as to the attitude which the United States would assume in regard to her right as a neutral to continue her trade with a blockaded aggressor state. If the members of the League were assured that the United States would not insist upon nullifying the economic sanction of the League, when applied to enforce peace, such cooperation would go far toward rendering the sanction of the League effective in keeping the peace of the world.

America, therefore, should make an agreement with the League of Nations that she will not permit munitions to be shipped, nor will she back her nationals in attempting to ship merchandise, to a country which has been mutually regarded as an aggressor state. Such an agreement would involve that the Council, before designating any state as an aggressor, should have an exchange of views with Washington; and a further agreement that the Council would not so designate a state unless the government of the United States agreed. Upon such agreement the United States would accept the negative obligations mentioned, and the League could proceed to apply the sanction of a blockade to enforce peace without fear of collision with America.

This arrangement would constitute a body of "leagued and associated nations", somewhat similar to the method by which America co-operated in the World War, not as an actual ally, but under an arrangement called "the allied and associated powers". The negotiations looking toward such a working agreement between America and the League of Nations should be initiated by the United States, since the League authorities are still sensitive because of the refusal of America to have any official relations with the League, and they would hardly care to court a further refusal; while the United States, on the other hand, could be certain that any suggestion of a practical working agreement with the League in its efforts toward world peace would be warmly received and sympathetically considered by it.

*Toward the United States of the World*

Should some such arrangement between the League and the United States be consummated, the peace of the world would be fairly well assured as long as the principal powers, Great Britain, France, Germany and America, continued to act in harmony and to see eye to eye. These four powers, acting together, could command world peace. But what if these heavily armed guardians of the peace should fall out among themselves? As the old Roman put it: Quis custodet ipsos custodes? Who will watch the watchers themselves?

This is the problem that has invariably con-

fronted every group of states that have sought to avoid warfare among themselves, and the attempt to solve it has always led to one of two alternatives: domination by the strongest state, or federation of all the states.

While the United States has refused to accept the League structure as it now exists, both of our leading political parties and several of our presidents have clearly and repeatedly expressed the conviction, that the preservation of international peace cannot be achieved without some kind of an association of nations. Our experience in keeping the peace among a large number of sovereign states, as keenly insistent upon their rights, their prestige and their interests as the states of Europe or any others, ought to incline our statesmen to favor a similar form of organization for the states of the world as being the only form that is adequate for the purposes of establishing justice and maintaining permanent peace.

For this basic improvement of the structure of the League, however, the first move must be made by its own member states, since America is not a member and cannot with propriety make the suggestion. It is not likely that the members of the League will feel the need of a "more perfect union", even with their present experience of the impossibility of securing disarmament under the present League structure, until a crisis of some kind that divides the members into two approximately equal parts reveals the impotence of the organization

in the circumstances when its action is most needed, —that is, when another world war is threatening.

Whenever the time is opportune, and the members of the League propose a general convention for the purpose of examining what improvements are necessary in the League structure to render it adequate, and at the same time, if possible, to render it acceptable to the United States, we should be willing to send some of our elder statesmen to suggest that the federal form of organization, which has proved workable for over a century in this country, and for a shorter period in many other countries of the world, should be applied to the United States of the World.

# CHAPTER XIII

## WHAT SHOULD THE LEAGUE DO WITH AMERICA?

Something in the nature of a federation between nations, for the sole purpose of doing away with war, is the only rightful condition of things reconcilable with their individual freedom.—IMMANUEL KANT, on Perpetual Peace.

This final chapter might well be opened with the same query that opened the preceding one, but for a reason exactly opposite. Why ask this question? Has not the League shown the utmost eagerness, anxiety and solicitude to have America participate in the work of keeping the peace of the world? Has it not been the profoundest disappointment to all the members of the League that America has not joined? Did not the founders of the League make changes in the first rough draft of the Covenant for the specific purpose of satisfying the demands of America regarding the Monroe Doctrine and regarding the right of withdrawal from the League? Has not the League even within the past year invited one of the most highly respected American statesmen to confer with its committee, in the effort so to amend the statute of the Permanent Court of International

Justice as to make possible the adhesion of America?

These are but a few of the friendly gestures which the League of Nations has made toward America during the first decade of its existence. In every conference connected with the co-operative functions of the League its officials have never failed to extend to the United States a cordial invitation to participate. And it must be said that, in the field of humanitarian or co-operative activities, the efforts of the League to gain American participation and support have met with an increasing measure of success. There has been scarcely a single conference in this field in which there has not been a representative of the United States present; and while the American attending has not been designated as an official representative of the government, still the evident sincerity with which Americans have worked with the League representatives toward the solution of the problems under discussion must be very gratifying to friends of the League everywhere.

### *American Refusal to Participate in the Political Work of the League*

During the entire first decade of the League's existence, however, the United States has steadfastly and scrupulously declined to have any relations with the political or coercive functions of the League. In the real purpose of the League's creation—the preservation of international peace

throughout the world—the United States has had absolutely no part. This attitude of America is evidently not due to indifference on the part of this country to the establishment of international justice and permanent world peace. The whole history of the United States during the past century proves clearly that this nation not only desires to live in peace with other states, but also that we earnestly desire that our sister states shall be able to work out their destinies in peace and unafraid of attack. It was for this reason of sympathy with the new states of the Western Hemisphere, perhaps as much as for our own safety, that President Monroe as long ago as 1823 laid down the doctrine which has since borne his name. During the nineteenth century the statesmen of America were foremost in working for the establishment of some form of international tribunal, before which international controversies might be brought and decided on the basis of reason and justice, instead of the basis of might as determined in bloody warfare.

Furthermore, both the leading political parties have in their platforms affirmed the necessity of some form of organization or association of nations for the purpose of avoiding warfare and of establishing permanent peace based upon justice between states.

Why then, it may be asked, if the United States sincerely desires world peace and is convinced that some form of association among the nations is

necessary for its achievement, does America not join the League of Nations? The answer is, that the American people could not accept as proper and adequate the structure and functions of the League as laid down in the Covenant.

*American Objections to the League Structure*

The reader who has attentively read the preceding pages of this volume will appreciate that, underneath and behind all the specific objections that were made in America against various sections of the League Covenant, when the question of joining the League was before the country, there lay the overwhelming and historical conviction that a mere confederation, a mere alliance of governments, acting only by unanimous decision and upon states as political units, is totally inadequate as a machinery for establishing justice and suppressing warfare between states. We have tried that method in this country and found it a failure. Before we could achieve peace and prosperity among our states we were obliged to form a more perfect union. The states of Germany had the same experience. So did the cantons of Switzerland. And others might be cited.

In the legislative branch of the League there was objection to the basis of representation, especially to the fact that the British Empire had six votes, while the United States would have only one. The whole idea of action only by unanimous decision we knew from the history of our Conti-

nental Congress to be an impossible and impotent arrangement for the framing of international law.

In the judicial branch Americans could not see the value as a court, in distinction from a board of arbitration, of a group of judges who had no clear, written body of law upon which to decide cases; and they could not have much respect for a court that could act only when both the criminal and the victim agreed to allow it to act.

In the executive branch America objected to an arrangement by which an extraneous body could call upon the United States Government for men and money. That was precisely the arrangement among the American states under the Articles of Confederation, and the requisitions were so poorly met that it became imperative to change the whole system; and to establish, not a super-government acting upon the governments of the states, but a federal government co-ordinate with that of the states, each functioning independently in its own clearly defined sphere; the general organization not dominating the state organization, but each acting directly upon the citizens in accordance with its grant of authority.

### *A Conference to Compare Views Without Scrapping the League*

Every member of the League of Nations is convinced that, until the League becomes universal, it will not function properly. What action, then, can the League take in order to gain full Ameri-

can co-operation? The answer to this question would seem to be: let the League suggest that, without in any way suspending or endangering the present organization, a conference of a small group of elder statesmen from the League of Nations and from America gather and examine in what respects the League structure could be amended or improved, so as to be acceptable to America and to gain her association with the world organization.

Now that the World War has receded into history and the world is universally at peace, this comparison of views could be made in a calm, unhurried atmosphere, shielded by the necessary privacy to insure frank and open discussion of national interests and aspirations and of the compromises necessary to reconcile these; and the whole safeguarded by the understanding, that any agreement that might be reached would not become effective until it was ratified by each nation. Whether such a conference would achieve its object can be known only by trial. In any event, the present stage of progress reached by mankind in the League of Nations would not be endangered nor sacrificed, unless and until a more perfect form of organization should be ratified by the people of every country.

It is a very significant fact, that the United States is far more sympathetic toward the Permanent Court of International Justice than toward the Assembly or toward the Council of the League.

The reason is, that we see in the Court an attempt to establish a world judicial authority, similar to the position and functions of the United States Supreme Court in relation to our member states. Senator Borah voices the spirit of America in the quotation placed at the head of the preceding chapter: "If a body of international law is established, I would give the court compulsory jurisdiction. I would give it the same power that the Supreme Court of the United States has in controversies between states."

What the American people consider necessary for an effective association of nations for world peace is the establishment of a body to lay down international law, a body to apply the law, and a body to enforce the law.

# APPENDIX I

ARTICLES OF CONFEDERATION ADOPTED BY CONGRESS NOVEMBER 15, 1777, RATIFIED BY THE LAST OF THE THIRTEEN STATES, MARCH 1, 1781.[1]

*To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.*

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventyseven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the words following, viz.

*"Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Planta-*

[1] Revised Statutes of the United States, 1878, pp. 7–12.

*tions, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.*

Article I. The stile of this confederacy shall be "The United States of America."

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far

as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable

of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the pur-

poses for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any

State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States

in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imports and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall

also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the case shall agree in the determination: and if either party shall neglect to attend at the day

appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward": provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them

being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States,—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the Service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if

the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, ex-

cept for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confedera-

tion, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it hath pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for

that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

# APPENDIX II

## THE CONSTITUTION OF THE UNITED STATES ADOPTED SEPTEMBER 17, 1787, IN EFFECT FROM AND AFTER MARCH 4, 1789 [1]

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. (1) The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the

[1] The text of the Constitution, and the amendments thereto, are taken from the Revised Statutes of the United States, 1878, and Senate Document No. 12, 63d Congress, 1st Session.

The numbers prefixed to the clauses of the Constitution, and here placed in parentheses, do not appear in the original text.

Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

(2) No Person shall be a Representative who shall not have attained the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

(3) [1] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware

[1] The clause included in brackets is amended by the fourteenth amendment, second section.

one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

(4) When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

(5) The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. [ (1) The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.][1]

(2) Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments [until the next Meeting of the Legislature, which shall then fill such Vacancies].

[1] The first paragraph of section three of Article 1, of the Constitution of the United States, and so much of paragraph two of the same section as relates to filling vacancies are amended by the seventeenth amendment to the Constitution.

(3) No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

(4) The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

(5) The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

(6) The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

(7) Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. (1) The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any

time by Law make or alter such Regulations, except as to the Places of chusing Senators.

(2) The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. (1) Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

(2) Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

(3) Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

(4) Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. (1) The Senators and Representa-

tives shall receive a compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be priviliged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

(2) No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. (1) All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

(2) Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent,

together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

(3) Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power (1) To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform through the United States;

(2) To borrow money on the credit of the United States;

(3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

(4) To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

(5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

(6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

(7) To establish Post Offices and post Roads;

(8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

(9) To constitute Tribunals inferior to the supreme Court;

(10) To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

(11) To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

(12) To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

(13) To provide and maintain a Navy;

(14) To make Rules for the Government and Regulation of the land and naval Forces;

(15) To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

(16) To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

(17) To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

(18) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. (1) The Migration or Importation of such Persons as any of the States now existing

shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

(2) The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

(3) No Bill of Attainder or ex post facto Law shall be passed.

[1](4) No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

(5) No Tax or Duty shall be laid on Articles exported from any State.

(6) No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

(7) No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

(8) No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any

[1] See XVI Amendment.

present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. (1) No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

(2) No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

(3) No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## Article II

Section 1. (1) The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the

Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

(2) Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[1] [The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no

[1] This clause has been superseded by the twelfth amendment.

Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

(3) The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

(4) No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

(5) In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law pro-

vide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

(6) The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

(7) Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. (1) The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

(2) He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

(3) The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. (1) The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, or other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

(2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

(3) The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. (1) Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

(2) The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## Article IV

Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and

judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. (1) The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

(2) A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime.

(3) No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. (1) New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

(2) The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Con-

stitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## Article V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by the Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## Article VI

(1) All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

(2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

(3) The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## Article VII

The Ratifications of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of Sep-

tember in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.

## AMENDMENTS TO THE CONSTITUTION

### I. THE FIRST TEN AMENDMENTS TO THE CONSTITUTION IN LIEU OF A BILL OF RIGHTS

Articles in Addition To, and Amendment Of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States Pursuant to the Fifth Article of the Original Constitution.

#### Article I.[1]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercises thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably

[1] The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Mary-

to assemble, and to petition the Government for a redress of grievances.

### Article II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### Article III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a present-

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land, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

ment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

### Article VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

### Article VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### Article IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## II. SUBSEQUENT AMENDMENTS TO THE CONSTITUTION.

### Article XI.[1]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[1] The eleventh amendment was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

## Article XII.[1]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having

[1] The twelfth amendment, in lieu of the original third paragraph of the first section of the second article, was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## Article XIII.[1]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall

[1] The thirteenth amendment was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States.

exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

## ARTICLE XIV.[1]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for

[1] The fourteenth amendment was, in a proclamation of the Secretary of State, dated the 28th of July, 1868, declared to have been ratified by the legislatures of thirty of the thirty-six States.

participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to

enforce, by appropriate legislation, the provisions of this article.

### Article XV.[1]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

### Article XVI.[2]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

### Article XVII.[3]

(1) The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for

[1] The fifteenth amendment was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States.

[2] The sixteenth amendment was declared, in a proclamation by the Secretary of State, dated February 25, 1913, to have been ratified by the legislatures of thirty-eight of the forty-eight States.

[3] The seventeenth amendment was declared, in a proclamation by the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of thirty-six of the forty-eight States.

electors of the most numerous branch of the State legislatures.

(2) When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies; *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

(3) This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

## Article XVIII.[1]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the

[1] The eighteenth amendment was declared, in a proclamation by the Acting Secretary of State, dated January 29, 1919, to have been ratified by the legislatures of thirty-six of the forty-eight States.

Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## Article XIX.

Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Sec. 2. Congress shall have power, by appropriate legislation, to enforce the provisions of this article.

# APPENDIX III

## THE COVENANT OF THE LEAGUE OF NATIONS

*The High Contracting Parties*

In order to promote international co-operation and achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

### Article 1

The original Members of the League shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice there-

of shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

### Article 2

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

### Article 3

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require, at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with

any matter within the sphere of action of the League, or affecting the peace of the world.

At meetings of the Assembly, each Member of the League shall have one vote and may have not more than three representatives.

### Article 4

The Council shall consist of Representatives of the Principal Allied and Associated Powers,[1] together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece, and Spain shall be Members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League or at such other place as may be decided upon.

[1] The Principal Allied and Associated Powers are the following: The United States of America, the British Empire, France, Italy and Japan. (See Preamble of the Treaty of Peace with Germany.)

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote and may have not more than one Representative.

### Article 5

Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

### Article 6

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

### Article 7

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

### Article 8

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale

of their armaments, their military, naval and air programmes, and the condition of such of their industries as are adaptable to warlike purposes.

### Article 9

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

### Article 10

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

### Article 11

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

It is also declared to be the friendly right of

each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

### Article 12

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

### Article 13

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obliga-

tion, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute, the court of arbitration, to which the case is referred, shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

### Article 14

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

### Article 15

If there should arise between Members of the League any dispute likely to lead to a rupture

which is not submitted to arbitration as above, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers and the Council may forthwith direct the publication thereof.

The Council shall endeavor to effect a settlement of the dispute, and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dis-

pute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the actions and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a

majority of the other Members of the League exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the Members thereof other than the Representatives of one or more of the parties to the dispute.

### Article 16

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to submit it to the severance of all trade or financial relations, the prohibitions of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken

under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all other Members of the League represented thereon.

### Article 17

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the cir-

cumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

### Article 18

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall, as soon as possible, be published by it. No such treaty or international engagement shall be binding until so registered.

### Article 19

The Assembly may, from time to time, advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

### Article 20

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

### Article 21

Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.

### Article 22

To those colonies and territories which, as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being

and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations which, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and which are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised, subject to the rendering of administrative advice and assistance, by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of

conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-west Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Man-

datories and to advise the Council on all matters relating to the observance of the mandates.

### Article 23

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

### Article 24

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

### Article 25

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes, the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

### Article 26

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.